

## SUBCHAPTER K [RESERVED] SUBCHAPTER L—REGULATIONS UNDER CERTAIN OTHER ACTS ADMINISTERED BY THE FOOD AND DRUG ADMIN- ISTRATION

### PART 1210—REGULATIONS UNDER THE FEDERAL IMPORT MILK ACT

SOURCE: 38 FR 32104, Nov. 20, 1973, unless otherwise noted.

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AUTHORITY: 21 U.S.C. 141–149.

CROSS REFERENCES: For Animal and Plant Health Inspection Service regulations concerning tubercular cattle, see 9 CFR parts 50 and 77. For Animal and Plant Health Inspection Service regulations, see 9 CFR chapter I. For customs regulations concerning importation of milk and cream, see 19 CFR 12.7. For regulations of the Agricultural Marketing Service (Marketing Agreements and Orders) covering marketing areas for milk, see 7 CFR chapter X.

#### Subpart A—General Provisions

##### § 1210.1 Authority.

For the purposes of the regulations in this part the act (44 Stat. 1101; 21 U.S.C. 141–149) “To regulate the importation of milk and cream into the United States for the purpose of promoting the dairy industry of the United States and protecting the public health” shall be known and referred to as “the Federal Import Milk Act.”

##### § 1210.2 Scope of act.

The provisions of the act apply to all milk and cream offered for import into the continental United States.

##### § 1210.3 Definitions.

(a) *Secretary*. Secretary means the Secretary of Health and Human Services.

(b) *Commissioner*. Commissioner means the Commissioner of Food and Drugs.

(c) *Milk*. For the purposes of the act and of the regulations in this part:

Milk is the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within 15 days before and 5 days after calving, or such longer period as may be necessary to render the milk practically colostrum free.

(d) *Condensed milk*. Condensed milk, as the term is used in section 3, paragraph 2, of the Federal Import Milk Act, includes evaporated milk in the manufacture of which sterilization of the milk and cream is a necessary and usual process; it includes sweetened condensed milk only if it is prepared by a process which insures sterilization of the milk and cream. Condensed milk, as the term is used in section 3, paragraph 3, of the Federal Import Milk Act, means sweetened condensed milk.

(e) *Sweetened condensed milk.* Sweetened condensed milk conforms to the definition and standard of identity for such food as set out in § 131.120 of this chapter.

(f) *Evaporated milk.* Evaporated milk conforms to the definition and standard of identity for such food as set out in § 131.130 of this chapter.

(g) *Cream.* Cream is that portion of the milk, rich in milk fat, which rises to the surface of milk on standing or is separated from it by centrifugal force. (See §§ 131.150 through 131.157 of this chapter).

(h) *Pasteurization.* Pasteurization is the process of heating every particle of milk or cream to at least 143 °F., and holding it at such temperature continuously for at least 30 minutes, or to at least 161 °F., and holding it at such temperature continuously for at least 15 seconds.

(i) *Shipper.* A shipper is anyone, other than a common carrier, who ships, transports, or causes to be shipped or transported into the United States milk or cream owned by him.

[38 FR 32104, Nov. 20, 1973, as amended at 42 FR 14091, Mar. 15, 1977]

## Subpart B—Inspection and Testing

### § 1210.10 Availability for examination and inspection.

Dairy farms and plants from which milk or cream is shipped or transported into the United States shall be open at all reasonable times to authorized agents for necessary examinations and inspections. Failure to permit such examinations and inspections may be considered cause for the suspension or revocation of the permit.

### § 1210.11 Sanitary inspection of dairy farms.

The sanitary conditions of any dairy farm producing milk or cream to be shipped or transported into the United States or to a plant from which milk or cream is to be shipped or transported into the United States must score at least 50 points out of 100 points, according to the methods for scoring as provided by the score card for sanitary inspection of dairy farms in the form prescribed by the Secretary.

### § 1210.12 Physical examination of cows.

(a) Physical examination of any and all cows in herds producing milk or cream which is to be shipped or transported into the United States shall be made by an authorized veterinarian of the United States or of any State or municipality thereof or of the country in which such milk or cream is produced to determine whether such cow or cows are in a healthy condition. Such examination shall be made as often as the Secretary may deem necessary and, in any event, shall have been made within one year previous to the time of the importation.

(b) The result of the physical examination shall be set forth in the form prescribed by the Secretary.

### § 1210.13 Tuberculin test.

(a) Except as provided in § 1210.27 any and all animals in herds producing milk or cream which is to be shipped or transported raw into the United States shall be free from tuberculosis, as determined by a tuberculin test applied by an official veterinarian of the United States or of any State or municipality thereof or of the country in which such milk or cream is produced. Such test shall be made as often as the Secretary may deem necessary and, in any event, shall have been made within 1 year previous to the time of the importation. All animals showing positive or suspicious reactions to the tuberculin test must be permanently removed from the herd.

(b) The results of the tuberculin test and all facts concerning the disposal of reacting or suspected animals shall be set forth in the form prescribed by the Secretary.

### § 1210.14 Sanitary inspection of plants.

The sanitary conditions of any plant handling milk or cream any part of which is to be shipped or transported into the United States shall score at least 50 points out of 100 points according to the methods for scoring as provided by the score card for sanitary inspection of such plants in the form prescribed by the Secretary.

**§ 1210.15 Pasteurization; equipment and methods.**

All dairy farms and plants at which any milk or cream is pasteurized for shipment or transportation into the United States shall employ adequate pasteurization machinery of a type easily cleaned and of sanitary construction capable of holding every portion of the milk or cream at the required temperature for the required time. Such pasteurizing machinery shall be properly equipped with accurate time and temperature recording devices, which shall be kept at all times in good working order. The temperature at the time of heating and holding must invariably be recorded on thermograph charts, initialed, numbered, and dated by the official having jurisdiction over such farms and plants. All thermograph charts shall be held for a period of 2 years unless within that period they have been examined and released by such authorized agents as are designated by the Secretary.

**§ 1210.16 Method of bacterial count.**

The bacterial count of milk and cream refers to the number of viable bacteria as determined by the standard plate method of the American Public Health Association in use at the time of the examination.

**§ 1210.17 Authority to sample and inspect.**

Inspectors engaged in the enforcement of the Federal Import Milk Act are empowered to test for temperature, to take samples of milk or cream, and to use such means as may be necessary for these purposes.

**§ 1210.18 Scoring.**

Scoring of sanitary conditions required by §§ 1210.11, 1210.14 shall be done by an official inspector of the United States or of any State or municipality thereof or of the country in which the dairy farm or plant is located.

**Subpart C—Permit Control****§ 1210.20 Application for permit.**

Application for a permit to ship or transport milk or cream into the United States shall be made by the ac-

tual shipper upon forms prescribed by the Secretary. The request for forms of applications for permits should be addressed to Commissioner of Food and Drugs, Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

**§ 1210.21 Permit number.**

Each permit issued under the Federal Import Milk Act, including each temporary permit, shall bear an individual number. The right to the use of such number is restricted solely to the permittee.

**§ 1210.22 Form of tag.**

Each container of milk or cream shipped or transported into the United States by such permittee shall have firmly attached thereto a tag in the following form, bearing the required information in clear and legible type:

Product \_\_\_\_\_  
 (State whether raw milk, pasteurized milk, raw cream, or pasteurized cream.)  
 Permit number \_\_\_\_\_  
 Federal Import Milk Act, Department of Health and Human Services.  
 Shipper \_\_\_\_\_  
 Address of shipper \_\_\_\_\_

*Provided,* That in case of unit shipments consisting of milk only or cream only under one permit number, in lieu of each container being so marked, the vehicle of transportation, if sealed, may be tagged with the above tag, which should, in addition, show the number of containers and quantity of contents of each.

**§ 1210.23 Permits granted on certificates.**

In the discretion of the Secretary, a permit may be granted on a duly certified statement signed by a duly accredited official of an authorized department of any foreign government or of any State of the United States or any municipality thereof. Such statement shall be in the form of a certificate prescribed by the Secretary, and shall have attached thereto, as a part thereof, signed copies of reports prescribed by §§ 1210.12, 1230.13, and also by §§ 1210.11, 1210.14, as applicable. The necessary inspections and examinations upon which the reports are based

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shall be made by persons who are acting under the direct supervision of the certifying official.

#### § 1210.24 Temporary permits.

A temporary permit will be granted only upon a satisfactory showing that the applicant therefor has been unable to obtain the necessary inspections required by the applicable provisions of section 2 of the Federal Import Milk Act. Temporary permits shall be valid until the Secretary shall provide for inspection to ascertain that clauses 1, 2, and 3 of section 2 of the Federal Import Milk Act have been complied with.

#### § 1210.25 Permits for pasteurized milk or cream.

Permits to ship or transport pasteurized milk or cream into the United States will be granted only upon compliance with the requirements of clauses 1 and 3 of section 2 of the Federal Import Milk Act, §§ 1210.11, 1210.12, 1210.14, as applicable.

#### § 1210.26 Permits for raw milk or cream.

Except as provided in § 1210.27, permits to ship or transport raw milk or cream into the United States will be granted only when the milk or cream comes from dairy farms or plants where pasteurization is not carried on and then only upon compliance with the requirements of clauses 1, 2, and 3 of section 2 of the Federal Import Milk Act, §§ 1210.11 to 1210.14 as applicable.

#### § 1210.27 Permits waiving clauses 2 and 5, section 2 of the Federal Import Milk Act.

A permit to ship or transport raw milk into the United States will contain a waiver of clauses 2 and 5 of section 2 of the Federal Import Milk Act when the shipper is an operator of a creamery or condensery, or is a producer shipping or transporting to a creamery or condensery and the creamery or condensery is located in the United States within a radius of 20 miles of the point of production of such milk, and the milk, prior to its sale, use, or disposal, is pasteurized, condensed, or evaporated.

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#### § 1210.28 Permits waiving clause 4, section 2 of the Federal Import Milk Act.

The Secretary, in his discretion, will issue to a shipper who is an operator of a condensery a permit waiving the requirements of clause 4, of section 2 of the Federal Import Milk Act and allowing milk and cream containing not to exceed 1,200,000 bacteria per cubic centimeter to be shipped or transported into the United States if the condensery is located within a radius of 15 miles of the point of production of the milk and cream and such milk and cream are to be sterilized in the manufacture of condensed milk.

### Subpart D—Hearings

#### § 1210.30 Hearing procedure for permit denial, suspension, and revocation.

Any person who contests denial, suspension, or revocation of a permit shall have an opportunity for a regulatory hearing before the Food and Drug Administration pursuant to subpart F of part 16 of this chapter.

[41 FR 48269, Nov. 2, 1976, as amended at 42 FR 15676, Mar. 22, 1977]

#### § 1210.31 Hearing before prosecution.

Before violation of the act is referred to the Department of Justice for prosecution under section 5 of the Federal Import Milk Act, an opportunity to be heard will be given to the party against whom prosecution is under consideration. The hearing will be private and confined to questions of fact. The party notified may present evidence, either oral or written, in person or by attorney, to show cause why he should not be prosecuted. After a hearing is held, if it appears that the law has been violated, the facts will be reported to the Department of Justice.

[41 FR 48269, Nov. 2, 1976]

## PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

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AUTHORITY: 21 U.S.C. 41-50; 19 U.S.C. 1311.

CROSS REFERENCE: For U.S. Customs Service regulations governing importation of tea, see 19 CFR 12.33.

SOURCE: 38 FR 32107, Nov. 20, 1973, unless otherwise noted.

EFFECTIVE DATE NOTE: At 63 FR 12997, Mar. 17, 1998, part 1220 was removed, effective Apr. 17, 1998.

## Subpart A—General Provisions

### § 1220.5 Importation of inferior goods prohibited.

The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards fixed and established by the Secretary of Health and Human Services, in accordance with section 3 of the Tea Importation Act (29 Stat. 605; 21 U.S.C. 43), is prohibited.

### § 1220.6 Importation without appraisalment.

Importations of tea may be entered for consumption, for transit to foreign countries, or for immediate transportation without appraisalment. All entries must be on the regular forms, and the regular serial numbers, for both bonds and entries should be used.

### § 1220.7 Bonding of tea for consumption.

Tea entered for consumption must be stored as provided in § 1220.15, pending examination, and bond must be taken by the District Director of Customs, as provided in section 4 of the Tea Importation Act (29 Stat. 605; 21 U.S.C. 44), on Customs Form No. 7551 or 7553. This bond shall be canceled upon the issuance of a permit for release, as the consumption entry bond includes provisions for the redelivery, the exportation, the destruction, and the holding of the merchandise for customs examination.

**§ 1220.8 Tea packages and contents shall constitute a unit.**

Tea packages and contents shall be treated as a unit, and no separation of tea from its covering can be allowed, for either exportation or destruction, except under the two following conditions:

(a) In cases of importations of tea containing an excessive quantity of dust and siftings, the tea may be sifted and admitted to entry if found up to the standard, and the dust and siftings may also be admitted if found up to the standard or, if no standard exists, if found up to the respective leaf standard. If not up to the standard, or respective leaf standard when no standard exists, the dust and siftings must be exported or destroyed under Government supervision.

(b) If, by reason of damage, a tea otherwise equal in quality to the standard has been rejected, the damaged portion may be removed and exported or destroyed under custom's supervision, and the sound remainder resubmitted for examination and admitted to entry if found up to the standard.

**§ 1220.9 Duties of supervising tea examiner.**

(a) The supervising tea examiner is charged with the immediate supervision of all matters relating to the enforcement of the Tea Importation Act, and particularly the securing of uniformity in the treatment of imported teas at all the points of examination. He is also to perform such duties in connection with tea under the Federal Food, Drug, and Cosmetic Act as may be assigned to him.

(b) For the purpose of securing uniformity in the treatment of teas each tea examiner will send to the supervising tea examiner one-half pound samples of the teas rejected by him, also such other samples of teas as the supervising tea examiner may direct. To each sample a label (T. I. S. Cat. No. 2) shall be affixed.

(c) The examiner of tea at each port where a qualified tea examiner is stationed shall prepare and forward to the supervising tea examiner and to the chairman of the United States Board of Tea Appeals, as soon as practicable after the close of each month, a report

(T. I. S. Cat. No. 3), showing details as to every shipment of tea examined by the tea examiner. This information the tea examiner should compile from his report of "Teas Imported and Examined" (T. I. S. Cat. No. 4) which should always be kept up to date.

**Subpart B—Shipment and Storage**

**§ 1220.10 Teas destined for interior ports.**

Imported teas entered at an exterior port destined for immediate transportation to an interior port shall be forwarded without detention.

**§ 1220.15 Warehouses for storage of tea.**

(a) Warehouses for the storage of tea will be designated by the District Director of Customs and the proprietor thereof will be required to give a bond in the form prescribed (Customs Form No. 3581). Teas not stored in such designated warehouses will be placed in general order store or in public store pending examination and release on proper permit. In the absence of proper storage facilities at customhouses, teas may be retained in locked cars as constructive warehouses, under proper supervision, pending examination.

(b) The importer's premises may be designated as warehouses for the storage of tea on the filing of the bond provided for by the regulations in this part, but whenever, in the discretion of the District Director of Customs, it shall be considered desirable, a storekeeper shall be assigned to the supervision of such premises at the importer's expense while the teas shall remain under bond therein.

**§ 1220.16 Method of storing in warehouse.**

(a) When tea under examination is stored in any warehouse it must be so placed as to be separate from other merchandise and so as to allow convenient supervision by customs officers and officers of the Department of Health and Human Services. At ports where there are no bonded warehouses, class 2 or 3, the chief customs officer of the port will, when necessary, procure suitable premises for the temporary storage of any tea reaching his port.

The repacking of tea in warehouse for export purposes is not allowed.

(b) All expenses of storage, cartage, and labor must be paid by the importer.

**§ 1220.17 Removal of tea from warehouse.**

No tea shall be delivered to the importer or removed from warehouse for any purpose before the examination required by the Tea Importation Act.

**Subpart C—Customs Requirements**

**§ 1220.20 Examination of packages.**

Chief officers of customs may order such an examination of packages containing tea as will satisfy them that no dutiable goods are packed therein. For this purpose the customary designation should be made of packages for examination in public store.

**§ 1220.21 Tea blended, mixed and repacked for export.**

Tea importers desiring to import teas into the United States to be blended, mixed, and repacked for export can do so by bonding a warehouse under the provisions of section 311 of the Tariff Act of 1930 (46 Stat. 691; 19 U.S.C. 1311), upon compliance with §§ 19.13 to 19.15, inclusive, of the Customs Regulation of 1943 (19 CFR 19.13–19.15), giving bond on Customs Form No. 3583. All teas placed in bonded manufacturing warehouses must be exported.

CROSS REFERENCE: For customs regulations governing manufacturing warehouses, see 19 CFR 19.13–19.16.

**§ 1220.22 Unclaimed teas.**

Unclaimed teas should be taken possession of by District Directors of Customs the same as other unclaimed goods and placed in "general order", but not sold at the expiration of the year unless declared fit for consumption by a designated tea examiner.

CROSS REFERENCE: For U.S. Customs Service regulations governing disposition of merchandise unclaimed or in warehouse beyond the time fixed by law, see 19 CFR part 127.

**Subpart D—Sampling Procedures**

**§ 1220.30 Taking of samples at ports where tea examiner is stationed.**

The examination of teas at ports where a duly qualified tea examiner is stationed shall be made by means of samples drawn by the sampler from packages designated by the tea examiner. The importer, when his teas are ready for sampling, shall submit in duplicate to the tea examiner a chop list and release permit (T.I.S. Cat. No. 1) of the several lines included in the invoice, and the tea examiner shall select for examination packages representing the different lines.

**§ 1220.31 Taking of samples at ports where there is no tea examiner.**

(a) In case an entry of imported tea shall be made at a port or subport where no tea examiner is stationed the importer should prepare the chop list and release permit (T. I. S. Cat. No. 1) in triplicate and forward them to the chief officer of the customs at the port of entry.

(b) Samples shall be obtained by such officers, together with the original and one copy of the chop list and release permit (T. I. S. Cat. No. 1), and shall be forwarded to the nearest qualified tea examiner for his report and return. Samples sent for the purpose of examination from ports of importation to ports where tea examiners are located shall be packed in clean tin cans, free from odor, fitted with tight covers, and of a capacity to hold about 4 ounces avoirdupois of tea. Each can shall be properly labeled (T. I. S. Cat. No. 5).

**§ 1220.32 Result of examination; form of report.**

(a) The examination and report upon such samples shall be made in accordance with the provisions of section 7 of the Tea Importation Act (29 Stat. 606; 21 U.S.C. 46), and the result of this examination shall be noted on the invoice by the tea examiner before he returns the invoice to the collector of customs. The tea examiner at the same time should make his returns on the original copy of the chop list and release permit (T. I. S. Cat. No. 1), which, after being duly signed by him, should be

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forwarded by him to the importer or consignee.

(b) In case the tea coverings are dutiable and appraised at a value or rate higher than the entered value or rate, the tea examiner shall follow the same procedure as above, except that the chop list and release permit shall be returned to the District Director of Customs for such action as he sees fit to take.

(c) In case a partial release is desired the importer shall furnish an additional chop list and release permit (T. I. S. Cat. No. 1) of the goods that he desires, the original chop list and release permit being retained by the tea examiner until action on all the teas in the entry has been taken.

### § 1220.33 Chop list.

(a) In all cases the importer shall indicate on the chop list and release permit where the goods are to be sampled, whether on the dock or in warehouse. If the consular invoice has not been received the importer may prepare an additional copy of the chop list and release permit as a pro forma invoice, marking across the face thereof "Pro Forma Invoice."

(b) Importers may print their chop list and release permit forms, provided they conform strictly with the official form (T.I.S. Cat. No. 1). Otherwise, they can be obtained free from the United States tea examiner at ports where tea examiners are stationed, or from the chief officer of customs at ports, or subports, where no tea examiners are stationed.

### § 1220.34 Surplus samples.

(a) Surplus samples drawn from importations for purposes of examination, and which represent pure tea as declared by the examiner, shall be returned to the importer after examination is completed, if so requested by the importer, but if no request is made for the return of samples they shall be disposed of as provided in § 1220.43 for unused standard samples.

(b) Surplus samples representing tea which has been finally rejected should be destroyed, or, after being denatured, should be sold for manufacturing pur-

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poses under the Tea Importation Act (35 Stat. 163; 21 U.S.C. 41).

### § 1220.37 Exemption of sample packages from examination.

Where tea is put up in packages of not over 2 pounds in weight, imported by mail, express, or otherwise from the country of production, and the fact is established that the packages are samples for distribution, or for use in soliciting orders and not for sale, no examination should be made under the Tea Importation Act (29 Stat. 604; 21 U.S.C. 41-50), and they may be delivered at once to the importer.

### § 1220.38 Tea brought in by passengers.

Packages of tea not exceeding 5 pounds in weight brought by passengers may be delivered without examination under the Tea Importation Act (29 Stat. 604; 21 U.S.C. 41-50).

## Subpart E—Establishment of Standards

### § 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 28, 1995, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1995, and ending April 30, 1996:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1995.



(b) The Board of Tea Experts shall prepare duplicate samples of the standards for teas.

[38 FR 32107, Nov. 20, 1973, as amended at 55 FR 34797, Aug. 24, 1990; 60 FR 29987, June 7, 1995]

**§ 1220.41 Effective date of tea standards.**

The standards prepared and submitted to the Secretary of Health and Human Services by the Board of Tea Experts, appointed by him on or before February 15 of each year, shall be fixed and established as standards under the act and shall be in effect from the 1st day of May of each year until April 30, inclusive, of the following year, except that tea shipped from abroad prior to May 1 of any year shall be governed by the standards in effect at the time of shipment. Such standards for each year will be published in the FEDERAL REGISTER.

**§ 1220.42 To whom standards will be furnished.**

(a) A quantity of tea of the approved standards will be repacked in half-pound tin containers by competent tea packers under the constant supervision of an officer of the Food and Drug Administration and full sets will be furnished the Board of Tea Appeals, the supervising tea examiner, and the examiners of tea at all the tea examining stations.

(b) Standards will be furnished to actual importers and regular tea brokers on application to the supervising tea examiner, at the actual cost of the same.

**§ 1220.43 Disposition of obsolete standards.**

After standard samples have served their purpose and new season samples have been submitted, the old samples may be included in quarterly sales of unclaimed goods, and the proceeds paid into the Treasury, after deducting expenses of advertisement and sale, the designation on the packages showing such teas to have been used as Government standards to be obliterated before delivery to purchaser.

**Subpart F—Individual Standards**

**§ 1220.50 Macao or Canton congou and brick tea standards.**

Macao or Canton congou and brick tea should be compared with the standard for China congou. The mustiness or damaged flavor exhibited in certain Canton teas would be just cause for rejection.

**§ 1220.51 Teas imitating China green teas.**

Whenever Japans, Ceylons, Indias, or any other teas are made up to imitate the green teas of China, they are to be examined in comparison with the China green standards.

**§ 1220.52 Powchong Formosa oolong teas.**

All Powchong (scented) Formosa oolong teas should be examined in comparison with the Formosa standard.

**Subpart G—Inspection, Testing, and Grounds for Rejection**

**§ 1220.60 Instructions to examiners.**

(a) Examiners are instructed not to pass upon samples representing importations of tea imported separately from the importation; neither shall they give nonofficial opinions concerning samples.

(b) The examination of tea in comparison with the standards under this act shall be made according to the usages and customs of the tea trade, including the testing of an infusion in boiling water and, if necessary, chemical analysis; and examiners are advised, inasmuch as they must not under the law admit any tea inferior to the standards in purity, quality, and fitness for consumption, to employ the present methods of determining the presence of artificial coloring and other impurities. (See § 1220.64.)

**§ 1220.61 Testing of teas.**

(a) In comparing with standards, examiners are to test all the teas for quality, for impurity consisting of artificial coloring or facing matter, and other impurity, and for quality of infused leaf. Quality shall be ascertained by drawing, according to the custom of

the tea trade, with the weight of a silver half dime to the cup. The quality must be equal to standard, but the flavor may be that of a different district, as long as it is equally fit for consumption. As an illustration, a Teenkai may be equal to a Moyune, but a distinctly smoky or rank Fychow or Wenchow of sour character is not considered equal to the first two mentioned.

(b) Tea dust, fannings, siftings, and offgrades, including broken tea (BT), broken mix (BM), and Bohea when so marked and for which there is no specific standard, should be tested for quality, purity, and fitness for consumption in comparison with their respective leaf standards.

**§ 1220.62 Testing quality of infused leaf.**

In order to test the quality of the infused leaf in comparison with the standard, a second drawing should be made of double weight. Before pouring off the water, examine for an excess of "floaters" (woody stems which remain floating after the leaf is thoroughly infused) to determine whether they are in sufficient quantity to reduce the quality of the infusion below that of the standard. After pouring off the water the infused leaf should be taken out so as to exhibit the lower side which rested against the cup. Should the mass show a larger quantity of exhausted or decayed leaf than the standard, it affords sufficient evidence to be judged inferior in quality and consequently to be rejected.

**§ 1220.63 Test for paraffin and similar substances.**

If the examiner suspects the presence of paraffin or any similar substance, he should make the following test in comparison with the standard: Spread the tea between two sheets of unglazed white paper. Place thereon a hot iron. The greasy substance, if any, will appear on the paper, and if not equal to the standard the tea would justly be rejected.

**§ 1220.64 Tests for impurities.**

(a) To examine for impurities the following tests may be used in comparison with the standard:

(1) Read test, with additions and modifications, and the cup test, doubleweight. Place 2 ounces of tea in a sieve 5 or 6 inches in diameter, having 60 meshes to the inch and provided with a top. Sift a small quantity of the dust onto a semiglazed white paper about 8 by 10 inches. The amount of dust placed on the paper should be approximately 1 grain. To get the requisite amount of dust it is sometimes necessary to rub the leaf gently against the bottom of the sieve, but this must not be done until the sieve has been well shaken over the test paper. Pour the dust thus collected from the paper into the scales, weigh out 1 grain, and return this quantity to the same paper, distributing it well over the surface of the paper. Then place the paper on a plain, firm surface, preferably glass or marble, and crush the dust by pushing over it, with considerable pressure, a flat steel spatula about 5 inches long. Do this repeatedly until the tea dust is ground almost to a powder and the particles of coloring matter or other impurities, if any, are spread or streaked on the paper, so as to become more apparent. Brush off the loose dust and examine the paper by means of a simple lens magnifying  $7\frac{1}{2}$  diameters. In distinguishing these particles and streaks bright light is essential.

(2) The crushed leaf in either black or green tea appears in such quantity that there is no chance of mistaking the leaf for artificial coloring, facing material, or other impurities.

(3) The test is performed in comparison with the standard, and, if the tea is clearly equal to the standard with respect to artificial coloring, facing matter, or other impurities, the operation need not be repeated. If particles of artificial coloring, facing, or other impurities are found in the sample under comparison with the standard repeat this operation a sufficient number of times to be sure whether or not the tea contains impurities in excess of the standard.

(4) Repeat the operation, using semiglazed black paper instead of the white paper. This black-paper test shows the presence of facing and other impurities, such as talc, gypsum, barium sulfate, clay, and kaolin.

(5) If the tea under examination is found, by the foregoing tests, to contain more impurities than the standard, draw samples from packages representing at least 5 percent of the line in question, and subject each sample to the tests to ascertain whether or not the majority contain impurities in excess of the standard.

(6) The foregoing tests may be applied to tea of all varieties.

(b) Should the examination of the sample by the cup test, double-weight, for scum, sediment, etc., or the Read test, or both, disclose the presence of more impurities than the standard, a pound sample should be sent to the nearest district of the Food and Drug Administration and an analysis made in comparison with the standard to determine whether it contains more impurities than the standard. If the tea in question is found to contain more impurities than the standard, it would properly be rejected as not being equal to the standard in purity.

(c) All extraneous substances are impurities, and the presence of any may be detected in any way found efficient.

#### **§ 1220.65 Tea dust.**

Tea dust or broken leaf mixed with other teas or separate, made to imitate gunpowder or other teas, with the use of paste or gum, or any other substance, would justly be rejected.

#### **§ 1220.66 Tolerance for fine tea particles.**

Except for teas listed under § 1220.61(b), the amount by weight of fine tea particles that will pass through a wire sieve having 30 openings per linear inch in either direction and made of wire with a diameter of 0.01 inch, must not exceed 4 percent. Before condemning any tea for fine particles in excess of 4 percent, examiners shall sieve at least 4 representative samples, each taken from a different package in a shipment containing four or more packages, or where a lesser number of packages is involved, examiners shall sieve a representative sample from each package.

#### **§ 1220.67 Tea inferior to the standard in any requisite is justly rejected.**

Should a tea prove on examination to be inferior to the standard in any one of the requisites—namely, quality, quality of infused leaf, or purity—it would justly be rejected, notwithstanding the fact that it may be superior to the standards in some of the qualifications. No consideration shall be given to the appearance or so-called style of the dry leaf.

### **Subpart H—Administrative Procedures Based on Examination**

#### **§ 1220.70 Action based on result of examination.**

(a) If, after examination, the tea is found not be prohibited under the act, a release permit shall at once be granted to the importer, declaring that the tea is not within the prohibition of the Tea Importation Act; but if, on examination, such tea, or merchandise described as tea, is found in the opinion of the examiner, to come within the prohibitions of the law and of the regulations in this part, the importer shall be immediately notified (T.I.S. Cat. No. 6), and the tea, or merchandise described as tea, so returned, shall not be released by the customhouse authorities, unless on a re-examination called for by the importer the return of the examiner shall be found erroneous. Should a portion only of the invoice be passed by the examiner as correct, a permit of delivery shall be granted for that portion and the remainder held as provided in section 6 of the act (29 Stat. 606; 21 U.S.C. 47).

(b) In all cases of rejections by examiners, the importers should be notified of the reason for rejection; that is, whether it be on the ground of quality, character of infused leaf, dust, or admixture with foreign substance.

#### **§ 1220.71 Procedure for protest against findings.**

In case the collector of customs, importer, or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to the United States Board

of Tea Appeals, designated by the Secretary of Health and Human Services, and if such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption, as compared with the proper standards, a permit shall be issued by the District Director of Customs for its release and delivery to the importer; but if, upon such final re-examination by such board, the tea shall be found to be inferior in purity, quality, and fitness for consumption, as compared with the said standards, the importer or consignee shall give a bond, unless he has previously done so, with security satisfactory to the District Director of Customs, to export said tea out of the limits of the United States within a period of 6 months after such final re-examination; and if the same shall not have been exported within the time specified, the District Director of Customs, at the expiration of that time, shall cause the same to be destroyed.

**§ 1220.72 Procedure by importer for review.**

(a) If the importer desires teas rejected by the examiner to be reviewed by the United States Board of Tea Appeals, as provided in section 6 of the said act, he shall, within 30 days after he has been notified of such return, file a written application with the collector in the form T.I.S. Cat. No. 20. The District Director of Customs will thereupon forward such application to the United States Board of Tea Appeals, designated by the Secretary of Health and Human Services for review of the matter in dispute, and the proceedings shall be according to section 8 of the act.

(b) The re-examination of the tea samples must be restricted to the samples put up and sealed by the examiner at ports where qualified tea examiners are stationed, or by the chief officer of the customs, if there is no qualified tea examiner so stationed, in the presence of the importer or consignee, if he so desires. In either case the samples should be transmitted to the United States Board of Tea Appeals by the tea examiner, together with a copy of the finding of the examiner, setting forth the cause of condemnation.

(c) These samples for re-examination should weigh at least 1 pound, and should be put up in tins securely labeled (T.I.S. Cat. No. 21) and well wiped and seasoned. Half of such samples shall be utilized for the examination by the Board of Tea Appeals and for return to the port of entry with the decision, as heretofore, and the remaining half pound, if the tea be rejected by said board, shall be distributed among the various examiners for their information and guidance.

(d) Teas rejected by team examiners and rejections affirmed by the United States Board of Tea Appeals cannot be re-examined.

**§ 1220.73 Rejected tea.**

Rejected tea can only be released or withdrawn for exportation, for transportation and exportation, or for manufacturing purposes under the Tea Importation Act (35 Stat. 163; 21 U.S.C. 41), as the case may be.

**§ 1220.74 Exportation of rejected teas.**

(a) Teas to be exported for the reason that they are within the prohibition of the statute will be entered for exportation on Customs Form No. 7515, and bond on Customs Form No. 7557 shall be given for their exportation in a penal sum equal to double the value of the tea, provided consumption entry bond (Form No. 7551 or Form No. 7553) was not previously given.

(b) Whenever a bond is given to export any condemned tea in pursuance of the act, it will be canceled upon the filing of an outward bill of lading and a duly authenticated certificate of clearance from the customs officer supervising the lading thereof, as in the case of rejected foods and drugs (T.D. 28841), and all accrued charges must be paid before issuance of permit for exportation.

(c) At interior ports the export entry shall be made for transportation and immediate exportation in bond.

**§ 1220.75 Reimportation of exported teas forbidden.**

(a) No imported teas which have been rejected by an examiner, or by the United States Board of Tea Appeals, and exported under the provisions of this act, shall be reimported into the

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United States under the penalty of forfeiture for a violation of this prohibition.

(b) Customs officers will make seizure of any tea so imported.

### § 1220.76 Destruction of condemned tea.

Whenever condemned tea is to be destroyed it must be conveyed to some suitable place, and proper means, to be prescribed by the examiner, must be used for its effectual destruction, which shall be effected in the presence of an officer of customs, detailed by the District Director of Customs for the purpose. Before the tea is destroyed a particular description or statement of the same must be prepared containing the name of the importer or owner, the date of importation, the name of the vessel, and the place from which imported, with the character and quantity of the tea and the invoice value. The fact of its destruction must be certified on said statement by the officer detailed as aforesaid, which statement must be filed in the customhouse.

## PART 1230—REGULATIONS UNDER THE FEDERAL CAUSTIC POISON ACT

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AUTHORITY: 15 U.S.C. 1261–1276.

CROSS REFERENCES: For regulations relating to invoices, entry, and assessment of duties, see 19 CFR parts 141, 142, 143, 151, 152. For regulations regarding the examination, classification, and disposition of foods, drugs, devices, cosmetics, insecticides, fungicides, and caustic or corrosive substances, see 19 CFR part 12. For regulations relating to consular invoices, and documentation of merchandise, see 22 CFR parts 91 and 92.

SOURCE: 38 FR 32110, Nov. 20, 1973, unless otherwise noted.

## Subpart A—General Provisions

### § 1230.2 Scope of the act.

The provisions of the act apply to any container which has been shipped or delivered for shipment in interstate or foreign commerce, as defined in section 2(c) of the act (44 Stat. 1407; 15 U.S.C. 402) or which has been received from shipment in such commerce for sale or exchange, or which is sold or offered for sale or held for sale or exchange in any Territory or possession or in the District of Columbia.

### § 1230.3 Definitions.

(a) The word *container* as used in the regulations in this part means a retail parcel, package, or container suitable for household use and employed exclusively to hold any dangerous caustic or corrosive substance defined in the act.

(b) The words *suitable for household use* mean and imply adaptability for ready or convenient handling in places where people dwell.

## Subpart B—Labeling

### § 1230.10 Placement.

The label or sticker shall be so firmly attached to the container that it will

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remain thereon while the container is being used, and be so placed as readily to attract attention.

**§ 1230.11 Required wording.**

(a) The common name of the dangerous caustic or corrosive substance which shall appear on the label or sticker is the name given in section 2(a) of the act (44 Stat. 1406; 15 U.S.C. 402) or any other name commonly employed to designate and identify such substance.

(b) Preparations within the scope of the act bearing trade or fanciful names shall, in addition, be labeled with the common name of the dangerous caustic

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or corrosive substance contained therein and comply with all the other requirements of the act and of the regulations in this part.

**§ 1230.12 Manufacturer; distributor.**

If the name on the label or sticker is other than that of the manufacturer, it shall be qualified by such words as “packed for,” “packed by,” “sold by,” or “distributed by,” as the case may be, or by other appropriate expression.

**§ 1230.13 Labeling of “poison”.**

The following are styles of uncondensed Gothic capital letters 24-point (type face) size:

**POISON  
POISON**

When letters of not less than 24-point size are required on a label in stating the word “poison” they must not be smaller than those above set forth.

**§ 1230.14 Directions for treatment.**

Except as provided in § 1230.16, the container shall bear in all cases upon the label or sticker thereof, immediately following the word “Poison,” directions for treatment in the case of internal personal injury; in addition, if the substance may cause external injury, directions for appropriate treatment shall be given. The directions shall prescribe such treatments for personal injury as are sanctioned by competent medical authority, and the materials called for by such directions shall be, whenever practicable, such as are usually available in the household.

**§ 1230.15 Responsibility for labeling directions for treatment.**

A person who receives from a manufacturer or wholesaler any container which under the conditions set forth in section 2(b)(4) of the act and § 1230.16

does not bear at the time of shipment directions for treatment in the case of personal injury must place such directions on the label or sticker if he offers such container for general sale or exchange.

**§ 1230.16 Exemption from labeling directions for treatment.**

Manufacturers and wholesalers only, at the time of shipment or delivery for shipment, are exempted from placing directions for treatment on the label or sticker of any container for other than household use, but in any event the information required by section 2(b) (1), (2), and (3) of the act (44 Stat. 1407; 15 U.S.C. 402) and the regulations in this part shall be given.

**Subpart C—Guaranty**

**§ 1230.20 General guaranty.**

In lieu of a particular guaranty for each lot of dangerous caustic or corrosive substances, a general continuing guaranty may be furnished by the

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guarantor to actual or prospective purchasers. The following are forms of continuing guaranties:

(a) Substances for both household use and other than household use:

The undersigned guarantees that the retail parcels, packages, or containers of the dangerous caustic or corrosive substance or substances to be sold to \_\_\_\_\_ are not misbranded within the meaning of the Federal Caustic Poison Act.

(Date)

(Signature and address of  
guarantor)

(b) Substances for other than household use (this form may be issued only by a manufacturer or wholesaler) (§§ 1230.15, 1230.16):

The dangerous caustic or corrosive substance or substances in retail parcels, packages, or containers suitable for household use to be sold to \_\_\_\_\_ are for other than household use, and guaranteed not to be misbranded within the meaning of the Federal Caustic Poison Act.

(Date)

(Signature and address of  
manufacturer or wholesaler)

### § 1230.21 Specific guaranty.

If a guaranty in respect to any specific lot of dangerous caustic or corrosive substances be given, it shall be incorporated in or attached to the bill of sale, invoice, or other schedule bearing the date and the name and quantity of the substance sold, and shall not appear on the label or package. The following are forms of specific guaranties:

(a) Substances for both household use and other than household use:

The undersigned guarantees that the retail parcels, packages, or containers of the dangerous caustic or corrosive substance or substances listed herein (or specifying the substances) are not misbranded within the meaning of the Federal Caustic Poison Act.

(Signature and address of guarantor)

(b) Substances for other than household use (this form may be issued only by a manufacturer or wholesaler) (§§ 1230.15, 1230.16):

The dangerous caustic or corrosive substance or substances listed herein (or specifying the substances) in retail parcels, packages, or containers suitable for household use are for other than household use and are

guaranteed not to be misbranded within the meaning of the Federal Caustic Poison Act.

(Name and address of manufacturer  
or wholesaler)

## Subpart D—Administrative Procedures

### § 1230.30 Collection of samples.

Samples for examination by or under the direction and supervision of the Food and Drug Administration shall be collected by:

(a) An authorized agent in the employ of the Department of Health and Human Services;

(b) Any officer of any State, Territory, or possession, or of the District of Columbia, authorized by the Secretary of Health and Human Services.

### § 1230.31 Where samples may be collected.

Caustic or corrosive substances within the scope of this act (44 Stat. 1406; 15 U.S.C. 401-411) may be sampled wherever found.

### § 1230.32 Analyzing of samples.

Samples collected by an authorized agent shall be analyzed at the laboratory designated by the Food and Drug Administration. Only such samples as are collected in accordance with §§ 1230.30, 1230.31 may be analyzed by or under the direction and supervision of the Food and Drug Administration. Upon request one subdivision of the sample, if available, shall be delivered to the party or parties interested.

### § 1230.33 Investigations.

Authorized agents in the employ of the Department of Health and Human Services may make investigations, including the inspection of premises where dangerous caustic and corrosive substances subject to the act are manufactured, packed, stored, or held for sale or distribution, and make examinations of freight and other transportation records.

### § 1230.34 Analysis.

(a) The methods of examination or analysis employed shall be those prescribed by the Association of Official

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Agricultural Chemists, when applicable, provided, however, that any method of analysis or examination satisfactory to the Food and Drug Administration may be employed.

(b) All percentages stated in the definitions in section 2(a) of the Federal Caustic Poison Act shall be determined by weight.

#### § 1230.35 Hearings.

Whenever it appears from the inspection, analysis, or test of any container that the provisions of section 3 or 6 of the Federal Caustic Poison Act (44 Stat. 1407, 1409; 15 U.S.C. 403, 406) have been violated and criminal proceedings are contemplated, notice shall be given to the party or parties against whom prosecution is under consideration and to other interested parties, and a date shall be fixed at which such party or parties may be heard. The hearing shall be held at the office of the Food and Drug Administration designated in the notice and shall be private and confined to questions of fact. The parties notified may present evidence, either oral or written, in person or by attorney, to show cause why the matter should not be referred for prosecution as a violation of the Federal Caustic Poison Act.

#### § 1230.36 Hearings; when not provided for.

No hearing is provided for when the health, medical, or drug officer or agent of any State, Territory, or possession, or of the District of Columbia, acts under the authority contained in section 8 of the Federal Caustic Poison Act (44 Stat. 1409; 15 U.S.C. 408) in reporting a violation direct to the United States attorney.

#### § 1230.37 Publication.

(a) After judgment of the court in any proceeding under the Federal Caustic Poison Act, notice shall be given by publication. Such notice shall include the findings of the court and may include the findings of the analyst and such explanatory statements of fact as the Secretary of Health and Human Services may deem appropriate.

(b) This publication may be made in the form of a circular, notice, or bul-

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letin, as the Secretary of Health and Human Services may direct.

(c) If an appeal be taken from the judgment of the court before such publication, that fact shall appear.

### Subpart E—Imports

#### § 1230.40 Required label information.

Containers which are offered for import shall in all cases bear labels or stickers having thereon the information required by section 2(b) (1), (2), and (3) of the Federal Caustic Poison Act and the directions for treatment in the case of personal injury, except such directions need not appear on the label or sticker at the time of shipment by a wholesaler or manufacturer for other than household use.

#### § 1230.41 Delivery of containers.

Containers shall not be delivered to the consignee prior to report of examination, unless a bond has been given on the appropriate form for the amount of the full invoice value of such containers, together with the duty thereon, and the refusal of the consignee to return such containers for any cause to the custody of the District Director of Customs when demanded, for the purpose of excluding them from the country or for any other purpose, the consignee shall pay an amount equal to the sum named in the bond, and such part of the duty, if any, as may be payable, as liquidated damages for failure to return to the District Director of Customs on demand all containers covered by the bond.

#### § 1230.42 Invoices.

As soon as the importer makes entry, the invoices covering containers and the public stores packages shall be made available, with the least possible delay, for inspection by the representative of the district. When no sample is desired the invoice shall be stamped by the district "No sample desired, Food and Drug Administration, Department of Health and Human Services, per (initials of inspecting officer)."

#### § 1230.43 Enforcement.

(a) *Enforcement agency.* The Federal Caustic Poison Act shall be enforced by



the Food and Drug Administration, Department of Health and Human Services.

(b) *Enforcement of provisions.* The enforcement of the provisions of the Federal Caustic Poison Act as they relate to imported dangerous caustic or corrosive substances, will, as a general rule, be under the direction of the chief of the local inspection district of the Food and Drug Administration, Department of Health and Human Services, and District Directors of Customs acting as administrative officers in carrying out directions relative to the detention, exportation, and sale, or other disposition of such substances and action under the bond in case of noncompliance with the provisions of the Federal Caustic Poison Act.

(c) *Chief of district as customs officer.* The chief of district shall be deemed a customs officer in enforcing import regulations.

(d) *Nonlaboratory ports.* (1) At the ports of entry where there is no district of the Food and Drug Administration, the District Director of Customs or deputy, on the day when the first notice of expected shipment of containers is received, either by invoice or entry, shall notify the chief of district in whose territory the port is located.

(2) On the day of receipt of such notice the chief of district shall mail to the District Director of Customs appropriate notice, if no sample is desired. This notice serves as an equivalent to stamping the invoices at district ports with the legend "No sample desired, Food and Drug Administration, Department of Health and Human Services, per (initials of inspecting officer)."

(3) If samples are desired, the Chief of district shall immediately notify the District Director of Customs.

(4) The District Director of Customs at once shall forward samples, accompanied by description of shipment.

(5) When samples are desired from each shipment of containers, the chief of district shall furnish to District Director of Customs and deputies at ports within the district's territory a list of such containers, indicating the size of sample necessary. Samples should then be sent promptly on arrival of containers without awaiting special request.

(6) In all other particulars the procedure shall be the same at nonlaboratory ports as at laboratory ports, except that the time consumed in delivery of notices by mail shall be allowed for.

#### § 1230.44 Samples.

On the same day that samples are requested by the district, the District Director of Customs or appraiser shall notify the importer that samples will be taken, that the containers must be held intact pending a notice of the result of inspection and analysis, and that in case the containers do not comply with the requirements of the Federal Caustic Poison Act, they must be returned to the District Director of Customs for disposition. This notification may be given by the District Director of Customs or appraiser through individual notices to the importer or by suitable bulletin notices posted daily in the customhouse.

#### § 1230.45 No violation; release.

As soon as examination of the samples is completed, if no violation of the act is detected, the chief of the district shall send a notice of release to the importer and a copy of this notice to the District Director of Customs for his information.

#### § 1230.46 Violation.

(a) If a violation of the Federal Caustic Poison Act is disclosed, the chief of the district shall send to the importer due notice of the nature of the violation and of the time and place where evidence may be presented, showing that the containers should not be refused admission. At the same time similar notice regarding detention of the containers shall be sent to the District Director of Customs, requesting him to refuse delivery thereof or to require their return to customs custody if by any chance the containers were released without the bond referred to in § 1230.41. The time allowed the importer for representations regarding the shipment may be extended at his request for a reasonable period to permit him to secure such evidence.

(b) If the importer does not reply to the notice of hearing in person or by letter within the time allowed on the

notice, a second notice, marked "second and last notice," shall be sent at once by the chief of the district, advising him that failure to reply will cause definite recommendation to the District Director of Customs that the containers be refused admission and that the containers be exported within 3 months under customs supervision.

**§ 1230.47 Rejected containers.**

(a) In all cases where the containers are to be refused admission, the chief of the district within 1 day after hearing, or, if the importer does not appear or reply within 3 days after second notice, shall notify the District Director of Customs in duplicate accordingly.

(b) Not later than 1 day after receipt of this notice the District Director of Customs shall sign and transmit to the importer one of the copies, which shall serve as notification to the importer that the containers must be exported under customs supervision within 3 months from such date, as provided by law; the other notice shall be retained as office record and later returned as a report to the chief of the district. In all cases the importer shall return his notice to the District Director of Customs, properly certified as to the information required, as the form provides.

**§ 1230.48 Relabeling of containers.**

(a) If containers are to be released after relabeling, a notice shall be sent by the chief of district direct to the importer, a carbon copy being sent to the District Director of Customs. This notice must state specifically the conditions to be performed, so as to bring the performance thereof under the provisions of the customs bonds on consumption and warehouse entries, these bonds including provisions requiring compliance with all of the requirements of the Federal Caustic Poison Act and all regulations and instructions issued thereunder. The notice will also state the officer to be notified by the importer when the containers are ready for inspection.

(b) The importer must return the notice to the District Director of Customs or chief of district, as designated, with the certificate thereon filled out, stating that he has complied with the

prescribed conditions and that the containers are ready for inspection at the place named.

(c) This notice will be delivered to the inspection officer, who, after inspection, will endorse the result thereof on the back of the notice and return the same to the District Director of Customs or to the chief of district, as the case may be.

(d) When the conditions to be complied with are under the supervision of the chief of district, and these conditions have been fully met, he shall release the containers to the importer, sending a copy of the notice of release to the District Director of Customs for his information. If the containers have not been properly relabeled within the period allowed, the chief of district shall immediately give notice in duplicate to the District Director of Customs of the results of inspection. The District Director of Customs shall sign and immediately transmit one copy of the notice to the importer and proceed in the usual manner.

(e) If the containers are detained subject to relabeling to be performed under the supervision of the District Director of Customs, the District Director of Customs, as soon as relabeling is accomplished, will notify the importer that the containers are released.

(f) If the containers have not been properly relabeled within the period allowed, their sale after labeling as required by the act or other disposition must be effected by the District Director of Customs.

(g) When the final action has been taken on containers which have been refused admission, sold, or otherwise disposed of as provided for by the act or which have been relabeled under the supervision of the District Director of Customs, he shall send to the chief of district a notice of such final action, giving the date and disposition.

(h) When relabeling is allowed the importer must furnish satisfactory evidence as to the identity of the containers before release is given. The relabeling must be done at a stated place and apart from other containers of a similar nature.

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(i) When containers are shipped to another port for relabeling or exportation, they must be shipped under customs carrier's manifest, in the same manner as shipments in bond.

(j) District Directors of Customs will perform the inspection service whenever containers are to be exported, sold, or otherwise disposed of, and in other cases when there is no officer of the district available.

(k) District Directors of Customs and representatives of the district will confer and arrange the apportionment of the inspection service according to local conditions. Officers of the district will, whenever feasible, perform the inspection service in connection with relabeling.

### § 1230.49 Penalties.

(a) In case of failure to comply with the instructions or recommendations of the chief of district as to conditions under which containers may be disposed of, the District Director of Customs shall notify the chief of district in all cases coming to his attention within 3 days after inspection or after the expiration of the 3 months allowed by law if no action is taken.

(b) The chief of district, upon receipt of the above-described notice, and in all cases of failure to meet the conditions imposed in order to comply with the provisions of the Federal Caustic Poison Act coming directly under his supervision, shall transmit to the District Director of Customs such evidence as he may have at hand tending to indicate the importer's liability and make a recommendation accordingly.

(c) The District Director of Customs, within 3 days of the receipt of this recommendation, whether favorable or otherwise, shall notify the importer that, the legal period of 3 months for exportation or relabeling having expired, action will be taken within 30 days to enforce the terms of the bond.

## PART 1240—CONTROL OF COMMUNICABLE DISEASES

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AUTHORITY: 42 U.S.C. 216, 243, 264, 271.

CROSS REFERENCES: For Department of Health and Human Services regulations relating to foreign quarantine, sanitation measures, and control of communicable diseases, see Centers for Disease Control's requirements as set forth in 42 CFR parts 71 and 72.

SOURCE: 40 FR 5620, Feb. 6, 1975, unless otherwise noted.

### Subpart A—General Provisions

#### § 1240.3 General definitions.

As used in this part, terms shall have the following meaning:

(a) *Bactericidal treatment*. The application of a method or substance for the

destruction of pathogens and other organisms as set forth in § 1240.10.

(b) *Communicable diseases.* Illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) *Communicable period.* The period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.

(d) *Contamination.* The presence of a certain amount of undesirable substance or material, which may contain pathogenic microorganisms.

(e) *Conveyance.* Conveyance means any land or air carrier, or any vessel as defined in paragraph (n) of this section.

(f) *Garbage.* (1) The solid animal and vegetable waste, together with the natural moisture content, resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, and similar establishments, or (2) any other food waste containing pork.

(g) *Incubation period.* The period between the implanting of disease organisms in a susceptible person and the appearance of clinical manifestation of the disease.

(h) *Interstate traffic.* (1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation which is entirely within a State or possession,

(i) From a point of origin in any State or possession to a point of destination in any other State or possession, or

(ii) Between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or load-

ing persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.

(i) *Milk.* Milk is the product defined in § 131.110 of this chapter.

(j) *Milk products.* Food products made exclusively or principally from the lacteal secretion obtained from one or more healthy milk-producing animals, e.g., cows, goats, sheep, and water buffalo, including, but not limited to, the following: lowfat milk, skim milk, cream, half and half, dry milk, nonfat dry milk, dry cream, condensed or concentrated milk products, cultured or acidified milk or milk products, kefir, eggnog, yogurt, butter, cheese (where not specifically exempted by regulation), whey, condensed or dry whey or whey products, ice cream, ice milk, other frozen dairy desserts and products obtained by modifying the chemical or physical characteristics of milk, cream, or whey by using enzymes, solvents, heat, pressure, cooling, vacuum, genetic engineering, fractionation, or other similar processes, and any such product made by the addition or subtraction of milkfat or the addition of safe and suitable optional ingredients for the protein, vitamin, or mineral fortification of the product.

(k) *Minimum heat treatment.* The causing of all particles in garbage to be heated to a boiling temperature and held at that temperature for a period of not less than 30 minutes.

(l) *Possession.* Any of the possessions of the United States, including Puerto Rico and the Virgin Islands.

(m) *Potable water.* Water which meets the standards prescribed in the Environmental Protection Agency's Primary Drinking Water Regulations as set forth in 40 CFR part 141 and the Food and Drug Administration's sanitation requirements as set forth in this part and part 1250 of this chapter.

(n) *State.* Any State, the District of Columbia, Puerto Rico and the Virgin Islands.

(o) *Utensil.* Includes any kitchenware, tableware, glassware, cutlery, containers, or equipment with which food or drink comes in contact during storage, preparation, or serving.

(p) *Vessel*. Any passenger-carrying, cargo, or towing vessel exclusive of:

(1) Fishing boats including those used for shell-fishing;

(2) Tugs which operate only locally in specific harbors and adjacent waters;

(3) Barges without means of self-propulsion;

(4) Construction-equipment boats and dredges; and

(5) Sand and gravel dredging and handling boats.

(q) *Watering point*. The specific place or water boat from which potable water is loaded on a conveyance.

(r) *Molluscan shellfish*. Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the product consists entirely of the shucked adductor muscle.

(s) *Certification number* means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish processor.

(t) *Shellfish control authority* means a Federal, State, or foreign agency, or sovereign tribal government, legally responsible for the administration of a program that includes activities such as classification of molluscan shellfish growing areas, enforcement of molluscan shellfish harvesting controls, and certification of molluscan shellfish processors.

(u) *Tag* means a record of harvesting information attached to a container of shellstock by the harvester or processor.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983; 57 FR 57344, Dec. 4, 1992; 60 FR 65201, Dec. 18, 1995]

#### **§ 1240.10 Effective bactericidal treatment.**

Whenever, under the provisions of this part, bactericidal treatment is required, it shall be accomplished by one or more of the following methods:

(a) By immersion of the utensil or equipment for at least 2 minutes in clean hot water at a temperature of at least 170 °F or for one-half minute in boiling water;

(b) By immersion of the utensil or equipment for at least 2 minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if

hypochlorites are used or a concentration of equal bactericidal strength if chloramines are used;

(c) By exposure of the utensil or equipment in a steam cabinet at a temperature of at least 170 °F for at least 15 minutes or at a temperature of 200 °F for at least 5 minutes;

(d) By exposure of the utensil or equipment in an oven or hot air cabinet at a temperature of at least 180 °F for at least 20 minutes;

(e) In the case of utensils or equipment so designed or installed as to make immersion or exposure impractical, the equipment may be treated for the prescribed periods of time either at the temperatures or with chlorine solutions as specified above, (1) with live steam from a hose if the steam can be confined, (2) with boiling rinse water, or (3) by spraying or swabbing with chlorine solution;

(f) Any other method determined by the Commissioner of Food and Drugs, upon application of an owner or operator of a conveyance, to be effective to prevent the spread of communicable disease.

[40 FR 5620, Feb. 6, 1975, as amended at 54 FR 24900, June 12, 1989]

### **Subpart B—Administrative Procedures**

#### **§ 1240.20 Issuance and posting of certificates following inspections.**

The Commissioner of Food and Drugs may issue certificates based upon inspections provided for in this part and part 1250. Such certificates shall be prominently posted on conveyances.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983]

#### **§ 1240.30 Measures in the event of inadequate local control.**

Whenever the Commissioner of Food and Drugs determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, he may take such measures to prevent such spread of the diseases as

he deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983]

### Subpart C—Restrictions on Travel of Persons

#### § 1240.40 All communicable diseases.

A person who has a communicable disease in the communicable period shall not travel from one State or possession to another without a permit from the health officer of the State, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stop-overs other than those necessary for transportation connections shall be considered as places of destination.

#### § 1240.45 Report of disease.

The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops shall, as soon as practicable, notify the local health authority at the next port of call, station, or stop, and shall take such measures to prevent the spread of the disease as the local health authority directs.

#### § 1240.50 Certain communicable diseases; special requirements.

The following provisions are applicable with respect to any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof:

##### (a) *Requirements relating to travelers.*

(1) No such person shall travel from one State or possession to another, or on a conveyance engaged in interstate traffic, without a written permit of the Surgeon General or his authorized representative.

(2) Application for a permit may be made directly to the Surgeon General or to his representative authorized to issue permits.

(3) Upon receipt of an application, the Surgeon General or his authorized

representative shall, taking into consideration the risk of introduction, transmission, or spread of the disease from one State or possession to another, reject it, or issue a permit which may be conditioned upon compliance with such precautionary measures as he shall prescribe.

(4) A person to whom a permit has been issued shall retain it in his possession throughout the course of his authorized travel and comply with all conditions prescribed therein, including presentation of the permit to the operators of conveyances as required by its terms.

(b) *Requirements relating to operation of conveyances.* (1) The operator of any conveyance engaged in interstate traffic shall not knowingly (i) accept for transportation any person who fails to present a permit as required by paragraph (a) of this section, or (ii) transport any person in violation of conditions prescribed in his permit.

(2) Whenever a person subject to the provisions of this section is transported on a conveyance engaged in interstate traffic, the operator thereof shall take such measures to prevent the spread of the disease, including submission of the conveyance to inspection, disinfection and the like, as an officer of the Public Health Service designated by the Surgeon General for such purposes deems reasonably necessary and directs.

#### § 1240.54 Apprehension and detention of persons with specific diseases.

Regulations prescribed in parts 1240 and 1250 are not applicable to the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of the following diseases: Anthrax, chancroid, cholera, dengue, diphtheria, granuloma inguinale, infectious encephalitis, favus, gonorrhea, leprosy, lymphogranuloma venereum, meningococcus meningitis, plague, poliomyelitis, psittacosis, relapsing fever, ringworm of the scalp, scarlet fever, streptococcal sore throat, smallpox, syphilis, trachoma, tuberculosis, typhoid fever, typhus, and yellow fever.

**§ 1240.55 Responsibility with respect to minors, wards, and patients.**

A parent, guardian, physician, nurse, or other such person shall not transport, or procure or furnish transportation for any minor child or ward, patient or other such person who is in the communicable period of a communicable disease, except in accordance with provisions of this subpart.

**§ 1240.57 Members of military and naval forces.**

The provisions of §§ 1240.40, 1240.45, 1240.50, 1240.55 and 1240.57 shall not apply to members of the military or naval forces, and medical care or hospital beneficiaries of the Army, Navy, Veterans' Administration, or Public Health Service, when traveling under competent orders: *Provided*, That in the case of persons otherwise subject to the provisions of § 1240.50 the authority authorizing the travel requires precautions to prevent the possible transmission of infection to others during the travel period.

**Subpart D—Specific Administrative Decisions Regarding Interstate Shipments****§ 1240.60 Molluscan shellfish.**

(a) A person shall not offer for transportation, or transport, in interstate traffic any molluscan shellfish handled or stored in such an insanitary manner, or grown in an area so contaminated, as to render such molluscan shellfish likely to become agents in, and their transportation likely to contribute to the spread of communicable disease from one State or possession to another.

(b) All shellstock shall bear a tag that discloses the date and place they were harvested (by State and site), type and quantity of shellfish, and by whom they were harvested (i.e., the identification number assigned to the harvester by the shellfish control authority, where applicable or, if such identification numbers are not assigned, the name of the harvester or the name or registration number of the harvester's vessel). In place of the tag, bulk shellstock shipments may be accompanied by a bill of lading or similar

shipping document that contains the same information.

(c) All containers of shucked molluscan shellfish shall bear a label that identifies the name, address, and certification number of the packer or repacker of the molluscan shellfish.

(d) Any molluscan shellfish without such a tag, shipping document, or label, or with a tag, shipping document, or label that does not bear all the information required by paragraphs (b) and (c) of this section, shall be subject to seizure or refusal of entry, and destruction.

[40 FR 5620, Feb. 6, 1975, as amended at 60 FR 65202, Dec. 18, 1995]

**§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.**

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized or is made from dairy ingredients (milk or milk products) that have all been pasteurized, except where alternative procedures to pasteurization are provided for by regulation, such as in part 133 of this chapter for curing of certain cheese varieties.

(b) Except as provided in paragraphs (c) and (d) of this section, the terms "pasteurization," "pasteurized," and similar terms shall mean the process of heating every particle of milk and milk product in properly designed and operated equipment to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
145 °F (63 °C) <sup>1</sup> .....	30 minutes.
161 °F (72 °C) <sup>1</sup> .....	15 seconds.
191 °F (89 °C) .....	1 second.

<sup>1</sup> If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5 °F (3 °C).

Temperature	Time
194 °F (90 °C) .....	0.5 second.
201 °F (94 °C) .....	0.1 second.

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Temperature	Time
204 °F (96 °C) .....	0.05 second.
212 °F (100 °C) .....	0.01 second.

(c) Eggnog shall be heated to at least the following temperature and time specification:

Temperature	Time
155 °F (69 °C) .....	30 minutes.
175 °F (80 °C) .....	25 seconds.
180 °F (83 °C) .....	15 seconds.

(d) Neither paragraph (b) nor (c) of this section shall be construed as barring any other pasteurization process that has been recognized by the Food and Drug Administration to be equally efficient in the destruction of microbial organisms of public health significance.

[52 FR 29514, Aug. 10, 1987, as amended at 57 FR 57344, Dec. 4, 1992]

**§ 1240.62 Turtles intrastate and interstate requirements.**

(a) *Definition.* As used in this section the term “turtles” includes all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species (families Dermachelidae and Chelonidae).

(b) *Sales; general prohibition.* Except as otherwise provided in this section, viable turtle eggs and live turtles with a carapace length of less than 4 inches shall not be sold, held for sale, or offered for any other type of commercial or public distribution.

(c) *Destruction of turtles or turtle eggs; criminal penalties.* (1) Any viable turtle eggs or live turtles with a carapace length of less than 4 inches which are held for sale or offered for any other type of commercial or public distribution shall be subject to destruction in a humane manner by or under the supervision of an officer or employee of the Food and Drug Administration in accordance with the following procedures:

(i) Any District Office of the Food and Drug Administration, upon detecting viable turtle eggs or live turtles with a carapace length of less than 4 inches which are held for sale or offered for any other type of commercial or public distribution, shall serve upon

the person in whose possession such turtles or turtle eggs are found a written demand that such turtles or turtle eggs be destroyed in a humane manner under the supervision of said District Office, within 10 working days from the date of promulgation of the demand. The demand shall recite with particularity the facts which justify the demand. After service of the demand, the person in possession of the turtles or turtle eggs shall not sell, distribute, or otherwise dispose of any of the turtles or turtle eggs except to destroy them under the supervision of the District Office, unless and until the Director of the Center for Food Safety and Applied Nutrition withdraws the demand for destruction after an appeal pursuant to paragraph (c)(1)(ii) of this section.

(ii) The person on whom the demand for destruction is served may either comply with the demand or, within 10 working days from the date of its promulgation, appeal the demand for destruction to the Director of the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The demand for destruction may also be appealed within the same period of 10 working days by any other person having a pecuniary interest in such turtles or turtle eggs. In the event of such an appeal, the Center Director shall provide an opportunity for hearing by written notice to the appellant(s) specifying a time and place for the hearing, to be held within 14 days from the date of the notice but not within less than 7 days unless by agreement with the appellant(s).

(iii) Appearance by any appellant at the hearing may be by mail or in person, with or without counsel. The hearing shall be conducted by the Center Director or his designee, and a written summary of the proceedings shall be prepared by the person presiding. Any appellant shall have the right to hear and to question the evidence on which the demand for destruction is based, including the right to cross-examine witnesses, and he may present oral or written evidence in response to the demand.

(iv) If, based on the evidence presented at the hearing, the Center Director finds that the turtles or turtle



eggs were held for sale or offered for any other type of commercial or public distribution in violation of this section, he shall affirm the demand that they be destroyed under the supervision of an officer or employee of the Food and Drug Administration; otherwise, the Center Director shall issue a written notice that the prior demand by the District Office is withdrawn. If the Center Director affirms the demand for destruction he shall order that the destruction be accomplished in a humane manner within 10 working days from the date of the promulgation of his decision. The Center Director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the Center Director shall constitute final agency action, reviewable in the courts.

(v) If there is no appeal to the Director of the Center for Food Safety and Applied Nutrition from the demand by the Food and Drug Administration District Office and the person in possession of the turtles or turtle eggs fails to destroy them within 10 working days, or if the demand is affirmed by the Director of the Center for Food Safety and Applied Nutrition after an appeal and the person in possession of the turtles or turtle eggs fails to destroy them within 10 working days, the District Office shall designate an officer or employee to destroy the turtles or turtle eggs. It shall be unlawful to prevent or to attempt to prevent such destruction of turtles or turtle eggs by the officer or employee designated by the District Office. Such destruction will be stayed if so ordered by a court pursuant to an action for review in the courts as provided in paragraph (c)(1)(iv) of this section.

(2) Any person who violates any provision of this section, including but not limited to any person who sells, offers for sale, or offers for any other type of commercial or public distribution viable turtle eggs or live turtles with a carapace length of less than 4 inches, or who refuses to comply with a valid final demand for destruction of turtles or turtle eggs (either an unappealed demand by an FDA District Office or a demand which has been affirmed by the Director of the Center for Food Safety and Applied Nutrition pursuant to ap-

peal), or who fails to comply with the requirement in such a demand that the manner of destruction be humane, shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for each violation, in accordance with section 368 of the Public Health Service Act (42 U.S.C. 271).

(d) *Exceptions.* The provisions of this section are not applicable to:

(1) The sale, holding for sale, and distribution of live turtles and viable turtle eggs for bona fide scientific, educational, or exhibitional purposes, other than use as pets.

(2) The sale, holding for sale, and distribution of live turtles and viable turtle eggs not in connection with a business.

(3) The sale, holding for sale, and distribution of live turtles and viable turtle eggs intended for export only, provided that the outside of the shipping package is conspicuously labeled "For Export Only."

(4) Marine turtles excluded from this regulation under the provisions of paragraph (a) of this section and eggs of such turtles.

(e) *Petitions.* The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to amend this regulation. Any such petition shall include an adequate factual basis to support the petition, and will be published for comment if it contains reasonable grounds for the proposed regulation. A petition requesting such a regulation, which would amend this regulation, shall be submitted to the Dockets Management Branch, Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

[40 FR 22545, May 23, 1975, as amended at 46 FR 8461, Jan. 27, 1981; 48 FR 11431, Mar. 18, 1983; 54 FR 24900, June 12, 1989; 59 FR 14366, Mar. 28, 1994]

#### § 1240.65 Psittacine birds.

(a) The term psittacine birds shall include all birds commonly known as parrots, Amazons, Mexican double heads, African grays, cocatoos, macaws, parakeets, love birds, lorries, lorikeets, and all other birds of the psittacine family.

(b) No person shall transport, or offer for transportation, in interstate traffic any psittacine bird unless the shipment is accompanied by a permit from the State health department of the State of destination where required by such department.

(c) Whenever the Surgeon General finds that psittacine birds or human beings in any area are infected with psittacosis and there is such danger of transmission of psittacosis from such area as to endanger the public health, he may declare it an area of infection. No person shall thereafter transport, or offer for transportation, in interstate traffic any psittacine bird from such area, except shipments authorized by the Surgeon General for purposes of medical research and accompanied by a permit issued by him, until the Surgeon General finds that there is no longer any danger of transmission of psittacosis from such area. As used in this paragraph, the term "area" includes, but is not limited to, specific premises or buildings.

**§ 1240.70 Lather brushes.**

(a) *General requirements.* A person shall not transport, or offer for transportation by the owner or operator of a conveyance, nor shall the owner or operator of a conveyance knowingly transport for another person, in interstate traffic lather brushes made from animal hair or bristles unless such brushes have been manufactured in the United States, its territories, or possessions in compliance with the provisions of paragraphs (b), (c), (d), (e), and (f) of this section.

(b) *Treatment.* The hair or bristles used in such brushes, if other than badger hair, shall be subjected to sterilization or to a treatment found by the Surgeon General, upon application of an interested person and the submission by such person of supporting data, to be effective to destroy anthrax spores in the hair or bristles to be treated. Badger hair shall be subject to the requirement of sterilization or other treatment only if the Surgeon General finds, and so notifies the manufacturer, that the hair was secured from areas, or has been stored or handled under circumstances, likely to render it an agent in the spread of com-

municable diseases from one State or possession to another.

(c) *Sterilization.* Sterilization shall consist of:

(1) Exposure to steam under pressure in an autoclave at a minimum temperature of 120 °C (248 °F) for 15 minutes for bristles and 20 minutes for hair; or

(2) Exposure to streaming steam in an autoclave (not under pressure) at 100 °C (212 °F) for 30 minutes for bristles and 40 minutes for hair.

In either case, the steam temperature shall be measured in the exhaust line at its exit from the autoclave by an indicating thermometer found by the Surgeon General to give reasonable assurance of accuracy, and by a recording thermometer adjusted to read no higher at any time than the indicating thermometer. The time of exposure shall be measured from the moment at which the indicating thermometer reaches the specified sterilization temperature. Recording thermometer charts for each sterilization shall be kept readily available. The hair or bristles shall be sterilized in tied or wrapped bundles not exceeding 2½ inches in diameter and 5 inches in length, or in untied and unwrapped lots not exceeding 2½ inches in depth. The bundle or lots shall be placed on racks or trays in single layers, with the racks or trays separated from each other sufficiently to assure free circulation of the steam and the exposure of all the hair or bristles to such steam. If the hair or bristles are placed in the autoclave in wrapped bundles, the ends of the bundles shall be left open.

(d) *Handling and storage.* Hair or bristles which have been treated, by sterilization or otherwise, shall be marked with the date of treatment, the method used, and name and location of the establishment at which treatment occurred, and shall be so handled and stored as to prevent their contamination or recontamination with anthrax spores.

(e) *Identifying marks.* Lather brushes shall be marked permanently with the name of the manufacturer or with an identifying mark of the manufacturer registered with the Surgeon General.

(f) *Inspection.* Persons engaged in processing or other handling of hair or bristles for use in lather brushes manufactured for transportation in interstate traffic and persons engaged in manufacturing such lather brushes from hair or bristles shall permit authorized representatives of the Surgeon General to make at any reasonable time such inspection of the plants or other places, including the equipment, operations, and products thereof, at which such manufacturing, processing or handling is carried on as may be necessary in the judgment of such representatives to determine compliance with the provisions of this section.

[40 FR 5620, Feb. 6, 1975, as amended at 54 FR 24900, June 12, 1989]

#### **§ 1240.75 Garbage.**

(a) A person shall not transport, receive, or cause to be transported or received, garbage in interstate traffic and feed such garbage to swine unless, prior to the feeding, such garbage has received minimum heat treatment.

(b) A person transporting garbage in interstate traffic shall not make, or agree to make, delivery thereof to any person with knowledge of the intent or customary practice of such person to feed to swine garbage which has not been subjected to minimum heat treatment.

### **Subpart E—Source and Use of Potable Water**

#### **§ 1240.80 General requirements for water for drinking and culinary purposes.**

Only potable water shall be provided for drinking and culinary purposes by any operator of a conveyance engaged in interstate traffic, except as provided in § 1250.84(b) of this chapter. Such water shall either have been obtained from watering points approved by the Commissioner of Food and Drugs, or, if treated aboard a conveyance, shall have been subjected to treatment approved by the Commissioner of Food and Drugs.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983]

#### **§ 1240.83 Approval of watering points.**

(a) The Commissioner of Food and Drugs shall approve any watering point if (1) the water supply thereat meets the standards prescribed in the Environmental Protection Agency's Primary Drinking Water Regulations as set forth in 40 CFR part 141, and (2) the methods of and facilities for delivery of such water to the conveyance and the sanitary conditions surrounding such delivery prevent the introduction, transmission, or spread of communicable diseases.

(b) The Commissioner of Food and Drugs may base his approval or disapproval of a watering point upon investigations made by representatives of State departments of health or of the health authorities of contiguous foreign nations.

(c) If a watering point has not been approved, the Commissioner of Food and Drugs may permit its temporary use under such conditions as, in his judgment, are necessary to prevent the introduction, transmission, or spread of communicable diseases.

(d) Upon request of the Commissioner of Food and Drugs, operators of conveyances shall provide information as to watering points used by them.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983; 48 FR 13978, Apr. 1, 1983]

#### **§ 1240.86 Protection of pier water system.**

No vessel engaged in interstate traffic shall make a connection between its nonpotable water system and any pier potable water system unless provisions are made to prevent backflow from the vessel to the pier.

#### **§ 1240.90 Approval of treatment aboard conveyances.**

(a) The treatment of water aboard conveyances shall be approved by the Commissioner of Food and Drugs if the apparatus used is of such design and is so operated as to be capable of producing and in fact does produce, potable water.

(b) The Commissioner of Food and Drugs may base his approval or disapproval of the treatment of water upon investigations made by representatives of State departments of health

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or of the health authorities of contiguous foreign nations.

(c) Overboard water treated on vessels shall be from areas relatively free of contamination and pollution.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983]

### § 1240.95 Sanitation of water boats.

No vessel engaged in interstate traffic shall obtain water for drinking and culinary purposes from any water boat unless the tanks, piping, and other appurtenances used by the water boat in the loading, transportation, and delivery of such drinking and culinary water, have been approved by the Commissioner of Food and Drugs.

[40 FR 5620, Feb. 6, 1975, as amended at 48 FR 11431, Mar. 18, 1983]

## PART 1250—INTERSTATE CONVEYANCE SANITATION

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AUTHORITY: 42 U.S.C. 216, 243, 264, 271.

CROSS REFERENCES: For Department of Health and Human Services regulations relating to foreign quarantine and control of communicable diseases, see Centers for Disease Control's requirements as set forth in 42 CFR parts 71 and 72.

SOURCE: 40 FR 5624, Feb. 6, 1975, unless otherwise noted.

### Subpart A—General Provisions

#### § 1250.3 Definitions.

As used in this part, terms shall have the following meaning:

(a) *Bactericidal treatment*. The application of a method or substance for the destruction of pathogens and other organisms as set forth in § 1240.10 of this chapter.

(b) *Communicable diseases*. Illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host

either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) *Communicable period.* The period or periods during which the etiologic agent may be transferred directly or indirectly from the body of the infected person or animal to the body of another.

(d) *Contamination.* The presence of a certain amount of undesirable substance or material, which may contain pathogenic microorganisms.

(e) *Conveyance.* Conveyance means any land or air carrier, or any vessel as defined in paragraph (m) of this section.

(f) *Existing vessel.* Any vessel the construction of which was started prior to the effective date of the regulations in this part.

(g) *Garbage.* (1) The solid animal and vegetable waste, together with the natural moisture content, resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, and similar establishments, or (2) any other food waste containing pork.

(h) *Interstate traffic.* (1) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation which is entirely within a State or possession, (i) from a point of origin in any State or possession to a point of destination in any other State or possession, or (ii) between a point of origin and a point of destination in the same State or possession but through any other State, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country, or loading persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.

(i) *Possession.* Any of the possessions of the United States, including Puerto Rico and the Virgin Islands.

(j) *Potable water.* Water which meets the standards prescribed in the Environmental Protection Agency's Primary Drinking Water Regulations as set forth in 40 CFR part 141 and the Food and Drug Administration's sanitation regulations as set forth in this part and part 1240 of this chapter.

(k) *State.* Any State, the District of Columbia, Puerto Rico and the Virgin Islands.

(l) *Utensil.* Includes any kitchenware, tableware, glassware, cutlery, containers, or equipment with which food or drink comes in contact during storage, preparation, or serving.

(m) *Vessel.* Any passenger-carrying, cargo, or towing vessel exclusive of:

(1) Fishing boats including those used for shell-fishing;

(2) Tugs which operate only locally in specific harbors and adjacent waters;

(3) Barges without means of self-propulsion;

(4) Construction-equipment boats and dredges; and

(5) Sand and gravel dredging and handling boats.

(n) *Wash water.* Water suitable for domestic uses other than for drinking and culinary purposes, and medical care purposes excluding hydrotherapy.

(o) *Shellfish.* Any fresh, frozen, or incompletely cooked oysters, clams, or mussels, either shucked or in the shell, and any fresh, frozen, or incompletely cooked edible products thereof.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

## Subpart B—Food Service Sanitation on Land and Air Conveyances, and Vessels

### § 1250.20 Applicability.

All conveyances engaged in interstate traffic shall comply with the requirements prescribed in this subpart and § 1240.20 of this chapter.

**§ 1250.21 Inspection.**

The Commissioner of Food and Drugs may inspect such conveyance to determine compliance with the requirements of this subpart and § 1240.20 of this chapter.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.22 General requirements.**

All food and drink served on conveyances shall be clean, wholesome, and free from spoilage, and shall be prepared, stored, handled, and served in accordance with the requirements prescribed in this subpart and § 1240.20 of this chapter.

**§ 1250.25 Source identification and inspection of food and drink.**

(a) Operators of conveyances shall identify, when requested by the Commissioner of Food and Drugs, the vendors, distributors or dealers from whom they have acquired or are acquiring their food supply, including milk, fluid milk products, ice cream and other frozen desserts, butter, cheese, bottled water, sandwiches and box lunches.

(b) The Commissioner of Food and Drugs may inspect any source of such food supply in order to determine whether the requirements of the regulations in this subpart and in § 1240.20 of this chapter are being met, and may utilize the results of inspections of such sources made by representatives of State health departments or of the health authorities of contiguous foreign nations.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.26 Special food requirements.**

Milk, fluid milk products, ice cream and other frozen desserts, butter, cheese, and shellfish served or sold on conveyances shall conform to the following requirements:

(a) Milk and fluid milk products, including cream, buttermilk, skim milk, milk beverages, and reconstituted milk, shall be pasteurized and obtained from a source of supply approved by the Commissioner of Food and Drugs. The Commissioner of Food and Drugs shall approve any source of supply at

or from which milk or fluid milk products are produced, processed, and distributed so as to prevent the introduction, transmission, or spread of communicable diseases. If a source of supply of milk or fluid milk products has not been approved, the Commissioner of Food and Drugs may permit its temporary use under such conditions as, in his judgment, are necessary to prevent the introduction, transmission, or spread of communicable diseases. Containers of milk and fluid milk products shall be plainly labeled to show the contents, the word “pasteurized”, and the identity of the plant at which the contents were packaged by name and address, provided that a code may be used in lieu of address.

(b) Ice cream, other frozen desserts, and butter shall be manufactured from milk or milk products that have been pasteurized or subjected to equivalent heat treatment.

(c) Cheese shall be (1) pasteurized or subjected to equivalent heat treatment, (2) made from pasteurized milk products or from milk products which have been subjected to equivalent heat treatment, or (3) cured for not less than 60 days at a temperature not less than 35 °F.

(d) Milk, buttermilk, and milk beverages shall be served in or from the original individual containers in which received from the distributor, or from a bulk container equipped with a dispensing device so designed, constructed, installed, and maintained as to prevent the transmission of communicable diseases.

(e) Shellfish purchased for consumption on any conveyance shall originate from a dealer currently listed by the Public Health Service as holding an unexpired and unrevoked certificate issued by a State authority.

(f) Shucked shellfish shall be purchased in the containers in which they are placed at the shucking plant and shall be kept therein until used. The State abbreviation and the certificate number of the packers shall be permanently recorded on the container.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.27 Storage of perishables.**

All perishable food or drink shall be kept at or below 50 °F, except when being prepared or kept hot for serving.

**§ 1250.28 Source and handling of ice.**

Ice coming in contact with food or drink and not manufactured on the conveyance shall be obtained from sources approved by competent health authorities. All ice coming in contact with food or drink shall be stored and handled in such manner as to avoid contamination.

**§ 1250.30 Construction, maintenance and use of places where food is prepared, served, or stored.**

(a) All kitchens, galleys, pantries, and other places where food is prepared, served, or stored shall be adequately lighted and ventilated: *Provided, however,* That ventilation of cold storage rooms shall not be required. All such places where food is prepared, served, or stored shall be so constructed and maintained as to be clean and free from flies, rodents, and other vermin.

(b) Such places shall not be used for sleeping or living quarters.

(c) Water of satisfactory sanitary quality, under head or pressure, and adequate in amount and temperature, shall be easily accessible to all rooms in which food is prepared and utensils are cleaned.

(d) All plumbing shall be so designed, installed, and maintained as to prevent contamination of the water supply, food, and food utensils.

**§ 1250.32 Food-handling operations.**

(a) All food-handling operations shall be accomplished so as to minimize the possibility of contaminating food, drink, or utensils.

(b) The hands of all persons shall be kept clean while engaged in handling food, drink, utensils, or equipment.

**§ 1250.33 Utensils and equipment.**

(a) All utensils and working surfaces used in connection with the preparation, storage, and serving of food or beverages, and the cleaning of food utensils, shall be so constructed as to be easily cleaned and self-draining and shall be maintained in good repair.

Adequate facilities shall be provided for the cleaning and bactericidal treatment of all multiuse eating and drinking utensils and equipment used in the preparation of food and beverages. An indicating thermometer, suitably located, shall be provided to permit the determination of the hot water temperature when and where hot water is used as the bactericidal agent.

(b) All multiuse eating and drinking utensils shall be thoroughly cleaned in warm water and subjected to an effective bactericidal treatment after each use. All other utensils that come in contact with food and drink shall be similarly treated immediately following the day's operation. All equipment shall be kept clean.

(c) After bactericidal treatment, utensils shall be stored and handled in such manner as to prevent contamination before reuse.

**§ 1250.34 Refrigeration equipment.**

Each refrigerator shall be equipped with a thermometer located in the warmest portion thereof. Waste water drains from ice boxes, refrigerating equipment, and refrigerated spaces shall be so installed as to prevent backflow of contaminating liquids.

**§ 1250.35 Health of persons handling food.**

(a) Any person who is known or suspected to be in a communicable period or a carrier of any communicable disease shall not be permitted to engage in the preparation, handling, or serving of water, other beverages, or food.

(b) Any person known or suspected to be suffering from gastrointestinal disturbance or who has on the exposed portion of the body an open lesion or an infected wound shall not be permitted to engage in the preparation, handling, or serving of food or beverages.

**§ 1250.38 Toilet and lavatory facilities for use of food-handling employees.**

(a) Toilet and lavatory facilities of suitable design and construction shall be provided for use of food-handling employees. Railroad dining car crew lavatory facilities are regulated under § 1250.45.

(b) Signs directing food-handling employees to wash their hands after each use of toilet facilities shall be posted so as to be readily observable by such employees. Hand washing facilities shall include soap, sanitary towels and hot and cold running water or warm running water in lieu of hot and cold running water.

(c) All toilet rooms shall be maintained in a clean condition.

**§ 1250.39 Garbage equipment and disposition.**

Watertight, readily cleanable non-absorbent containers with close-fitting covers shall be used to receive and store garbage. Garbage and refuse shall be disposed of as frequently as is necessary and practicable.

**Subpart C—Equipment and Operation of Land and Air Conveyances**

**§ 1250.40 Applicability.**

The sanitary equipment and facilities on land and air conveyances engaged in interstate traffic and the use of such equipment and facilities shall comply with the requirements prescribed in this subpart.

**§ 1250.41 Submittal of construction plans.**

Plans for the construction or major reconstruction of sanitary equipment or facilities for such conveyances shall be submitted to the Commissioner of Food and Drugs for review of the conformity of such plans with the requirements of this subpart, except that submittal of plans shall not be required for any conveyance under reconstruction if the owner or operator thereof has made arrangements satisfactory to the Commissioner of Food and Drugs for inspections of such conveyances while under reconstruction for the purpose of determining conformity with those requirements.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.42 Water systems; constant temperature bottles.**

(a) The water system, whether of the pressure or gravity type, shall be com-

plete and closed from the filling ends to the discharge taps, except for protected vent openings. The water system shall be protected against back-flow.

(b) Filling pipes or connections through which water tanks are supplied shall be provided on both sides of all new railway conveyances and on existing conveyances when they undergo heavy repairs. All filling connections shall be easily cleanable and so located and protected as to minimize the hazard of contamination of the water supply.

(c) On all new or reconstructed conveyances, water coolers shall be an integral part of the closed system.

(d) Water filters if used on dining cars and other conveyances will be permitted only if they are so operated and maintained at all times as to prevent contamination of the water.

(e) Constant temperature bottles and other containers used for storing or dispensing potable water shall be kept clean at all times and shall be subjected to effective bactericidal treatment as often as may be necessary to prevent the contamination of water so stored and dispensed.

**§ 1250.43 Ice.**

Ice shall not be permitted to come in contact with water in coolers or constant temperature bottles.

**§ 1250.44 Drinking utensils and toilet articles.**

(a) No cup, glass, or other drinking utensil which may be used by more than one person shall be provided on any conveyance unless such cup, glass, or drinking utensil shall have been thoroughly cleaned and subjected to effective bactericidal treatment after each individual use.

(b) Towels, combs, or brushes for common use shall not be provided.

**§ 1250.45 Food handling facilities on railroad conveyances.**

(a) Both kitchens and pantries of cars hereafter constructed or reconstructed shall be equipped with double sinks, one of which shall be of sufficient size and depth to permit complete immersion of a basket of dishes during bactericidal treatment; in the pantry a



dishwashing machine may be substituted for the double sinks. If chemicals are used for bactericidal treatment, 3-compartment sinks shall be provided.

(b) A sink shall be provided for washing and handling cracked ice used in food or drink and shall be used for no other purpose.

(c) Lavatory facilities for the use of the dining car crew shall be provided on each dining car. Such facilities shall be conveniently located and used for hand and face washing only: *Provided, however,* That where the kitchen and pantry on a dining car hereafter constructed or reconstructed are so partitioned or separated as to impede free passage between them lavatory facilities shall be provided in both the kitchen and the pantry.

(d) Wherever toilet and lavatory facilities required by paragraph (c) of this section are not on the dining car, a lavatory shall be provided on the dining car for the use of employees. The lavatory shall be conveniently located and used only for the purpose for which it is installed.

#### § 1250.49 Cleanliness of conveyances.

Conveyances while in transit shall be kept clean and free of flies and mosquitoes. A conveyance which becomes infected with vermin shall be placed out of service until such time as it shall have been effectively treated for the destruction of the vermin.

#### § 1250.50 Toilet and lavatory facilities.

Where toilet and lavatory facilities are provided on conveyances they shall be so designed as to permit ready cleaning. On conveyances not equipped with retention facilities, toilet hoppers shall be of such design and so located as to prevent spattering of water filling pipes or hydrants.

#### § 1250.51 Railroad conveyances; discharge of wastes.

(a) *New railroad conveyances.* Human wastes, garbage, waste water, or other polluting materials shall not be discharged from any new railroad conveyance except at servicing areas approved by the Commissioner of Food and Drugs. In lieu of retention pending discharge at approved servicing areas,

human wastes, garbage, waste water, or other polluting materials that have been suitably treated to prevent the spread of communicable diseases may be discharged from such conveyances, except at stations. For the purposes of this section, "new railroad conveyance" means any such conveyance placed into service for the first time after July 1, 1972, and the terms "waste water or other polluting materials" do not include drainage of drinking water taps or lavatory facilities.

(b) *Nonnew railroad conveyances.* Human wastes, garbage, waste water, or other polluting materials shall not be discharged from any railroad conveyance, other than passenger conveyances for which an extension has been granted pursuant to paragraph (f) of this section, after December 31, 1977, except at servicing areas approved by the Commissioner of Food and Drugs. In lieu of retention pending discharge at approved servicing areas, human wastes, garbage, waste water, or other polluting materials that have been suitably treated to prevent the spread of communicable diseases may be discharged from such conveyances, except at stations. The terms "waste water or other polluting materials" do not include drainage of drinking water taps or lavatory facilities.

(c) *Toilets.* When railroad conveyances, occupied or open to occupancy by travelers, are at a station or servicing area, toilets shall be kept locked unless means are provided to prevent contamination of the area or station.

(d) *Submission of annual report.* Each railroad company shall submit to the Center for Food Safety and Applied Nutrition (HFS-627), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, an annual report of accomplishments made in modifying conveyances to achieve compliance with paragraph (b) of this section. Annual reports shall be required until a report is submitted showing that 100 percent of the company's conveyances can comply with the requirements of paragraph (b) of this section; annual reports shall be required subsequent to such report if conveyances not capable of complying with the requirements of paragraph (b) of this section are acquired. Every railroad company shall have not less

than 10 percent of its nonpassenger conveyances that are in operation capable of complying with the requirements of paragraph (b) of this section by December 31, 1974, not less than 40 percent by December 31, 1975, and not less than 70 percent by December 31, 1976. All conveyances, other than passenger conveyances for which an extension has been granted pursuant to paragraph (f) of this section, in operation after December 31, 1977, shall be capable of complying with paragraph (b) of this section.

(e) *Requirements of annual report.* Annual reports required by paragraph (d) of this section shall be submitted within 60 days of the end of each calendar year. Each report shall contain at least the following information:

- (1) Company name and address.
- (2) Name, title, and address of the company's chief operating official.
- (3) Name, title, address, and telephone number of the person designated by the company to be directly responsible for compliance with this section.
- (4) A statement that all new railroad conveyances placed into service after July 1, 1972 meet the requirements of this section.
- (5) A complete, factual, narrative statement explaining why retrofitting of noncomplying nonnew conveyances is incomplete, if it is incomplete.
- (6) A statement of the percentage of conveyances retrofitted with waste discharge facilities in compliance with this section as of the reporting date and the percentage expected to be completed by December 31st of the following year.
- (7) A tabular report with the following vertical columns: equipment type, e.g., locomotive, caboose, passenger car, and any others having toilets; number of toilets per conveyance; number of each equipment type in operation; and number of each to be retrofitted by December 31st of each year until 100 percent compliance with this section is achieved.

(f) *Variances and extensions*—(1) *Variances.* Upon application by a railroad company, the Director, Center for Food Safety and Applied Nutrition, may grant a variance from the compliance schedule prescribed in paragraph (d) of this section for nonpassenger

conveyances when the requested variance is required to prevent substantial disruption of the railroad company's operations. Such variance shall not affect the final deadline of compliance established in paragraph (d) of this section.

(2) *Extensions.* Upon application by a railroad company, the Director, Center for Food Safety and Applied Nutrition, may grant an extension of time for compliance with the requirements of paragraph (b) of this section beyond December 31, 1977, for passenger conveyances operated by railroad companies when compliance cannot be achieved without substantial disruption of the railroad company's operations.

(3) *Application for variance or extension.* Application for variances or extensions shall be submitted to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Manager, Interstate Travel Sanitation Sub-Program, HFF-312, 200 C St., SW., Washington, DC 20204, and shall include the following information:

- (i) A detailed description of the proposed deviation from the requirements of paragraphs (b) or (d) of this section.
- (ii) A report, current to the date of the request for a variance or extension, containing the information required by paragraph (e) of this section.

(4) *Administration of variances and extensions.* (i) Written notification of the granting or refusal of a variance or extension will be provided to the applying railroad company by the Director, Center for Food Safety and Applied Nutrition. The notification of a granted variance will state the approved deviation from the compliance schedule provided for in paragraph (d) of this section. The notification of a granted extension will state the final date for compliance with the provisions of paragraph (b) of this section.

(ii) A public file of requested variances and extensions, their disposition, and information relating to pending actions will be maintained in the Dockets Management Branch, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

(iii) After notice to the railroad company and opportunity for hearing in accordance with part 16 of this chapter, a

variance or extension may be withdrawn prior to its scheduled termination if the Director, Center for Food Safety and Applied Nutrition, determines that such withdrawal is necessary to protect the public health.

CROSS REFERENCE: For statutory exemptions for "intercity rail passenger service," see section 306(i) of 45 U.S.C. 546(i).

[40 FR 5624, Feb. 6, 1975, as amended at 40 FR 30110, July 17, 1975; 46 FR 8461, Jan. 27, 1981; 48 FR 11432, Mar. 18, 1983; 54 FR 24900, June 12, 1989; 59 FR 14366, Mar. 28, 1994; 61 FR 14481, Apr. 2, 1996]

EFFECTIVE DATE NOTE: For a document staying the effectiveness of § 1250.51 (b) and (d), see 42 FR 57122, Nov. 1, 1977.

#### **§ 1250.52 Discharge of wastes on highway conveyances.**

There shall be no discharge of excrement, garbage, or waste water from a highway conveyance except at servicing areas approved by the Commissioner of Food and Drugs.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

#### **§ 1250.53 Discharge of wastes on air conveyances.**

There shall be no discharge of excrement or garbage from any air conveyance except at servicing areas approved by the Commissioner of Food and Drugs.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

### **Subpart D—Servicing Areas for Land and Air Conveyances**

#### **§ 1250.60 Applicability.**

Land and air conveyances engaged in interstate traffic shall use only such servicing areas within the United States as have been approved by the Commissioner of Food and Drugs as being in compliance with the requirements prescribed in this subpart.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

#### **§ 1250.61 Inspection and approval.**

The Commissioner of Food and Drugs may inspect any such areas to determine whether they shall be approved. He may base his approval or dis-

approval on investigations made by representatives of State departments of health.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

#### **§ 1250.62 Submittal of construction plans.**

Plans for construction or major reconstruction of sanitation facilities at servicing areas shall be submitted to the Commissioner of Food and Drugs for review of the conformity of the proposed facilities with the requirements of this subpart.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

#### **§ 1250.63 General requirements.**

Servicing areas shall be provided with all necessary sanitary facilities so operated and maintained as to prevent the spread of communicable diseases.

#### **§ 1250.65 Drainage.**

All platforms and other places at which water or food supplies are loaded onto or removed from conveyances shall be adequately drained so as to prevent pooling.

#### **§ 1250.67 Watering equipment.**

(a) *General requirements.* All servicing area piping systems, hydrants, taps, faucets, hoses, buckets, and other appurtenances necessary for delivery of drinking and culinary water to a conveyance shall be designed, constructed, maintained and operated in such a manner as to prevent contamination of the water.

(b) *Outlets for nonpotable water.* Outlets for nonpotable water shall be provided with fittings different from those provided for outlets for potable water and each nonpotable water outlet shall be posted with permanent signs warning that the water is unfit for drinking.

(c) *Ice.* If bulk ice is used for the cooling of drinking water or other beverages, or for food preservation purposes, equipment constructed so as not to become a factor in the transmission of communicable diseases shall be provided for the storage, washing, handling, and delivery to conveyances of such bulk ice, and such equipment shall be used for no other purposes.

**§ 1250.70 Employee conveniences.**

(a) There shall be adequate toilet, washroom, locker, and other essential sanitary facilities readily accessible for use of employees adjacent to places or areas where land and air conveyances are serviced, maintained, and cleaned. These facilities shall be maintained in a clean and sanitary condition at all times.

(b) In the case of diners not in a train but with a crew on board, adequate toilet facilities shall be available to the crew within a reasonable distance but not exceeding 500 feet of such diners.

(c) Drinking fountains and coolers shall be constructed of impervious, nonoxidizing material, and shall be so designed and constructed as to be easily cleaned. The jet of a drinking fountain shall be slanting and the orifice of the jet shall be protected by a guard in such a manner as to prevent contamination thereof by droppings from the mouth. The orifice of such a jet shall be located a sufficient distance above the rim of the basin to prevent backflow.

**§ 1250.75 Disposal of human wastes.**

(a) At servicing areas and at stations where land and air conveyances are occupied by passengers the operations shall be so conducted as to avoid contamination of such areas and stations by human wastes.

(b) Toilet wastes shall be disposed of through sanitary sewers or by other methods assuring sanitary disposal of such wastes. All soil cans and removable containers shall be thoroughly cleaned before being returned to use. Equipment for cleaning such containers and for flushing nonremovable containers and waste carts shall be so designed as to prevent backflow into the water line, and such equipment shall be used for no purpose connected with the handling of food, water or ice.

(c) All persons who have handled soil cans or other containers which have come in contact with human wastes shall be required to wash their hands thoroughly with soap and warm water and to remove any garments which have become soiled with such wastes before engaging in any work connected with the loading, unloading, transport-

ing or other handling of food, water or ice.

**§ 1250.79 Garbage disposal.**

(a) Water-tight, readily cleanable, nonabsorbent containers with close-fitting covers shall be used to receive and store garbage.

(b) Can washing and draining facilities shall be provided.

(c) Garbage cans shall be emptied daily and shall be thoroughly washed before being returned for use.

**Subpart E—Sanitation Facilities and Conditions on Vessels**

**§ 1250.80 Applicability.**

The sanitation facilities and the sanitary conditions on vessels engaged in interstate traffic shall comply with the requirements prescribed in this subpart, provided that no major structural change will be required on existing vessels.

**§ 1250.81 Inspection.**

The Commissioner of Food and Drugs may inspect such vessels to determine compliance with the requirements of this subpart.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.82 Potable water systems.**

The following conditions must be met by vessel water systems used for the storage and distribution of water which has met the requirements of § 1240.80 of this chapter.

(a) The potable water system, including filling hose and lines, pumps, tanks, and distributing pipes, shall be separate and distinct from other water systems and shall be used for no other purposes.

(b) All potable water tanks shall be independent of any tanks holding nonpotable water or other liquid. All potable water tanks shall be independent of the shell of the ship unless (1) the bottom of the tank is at least 2 feet above the maximum load water line, (2) the seams in the shell are continuously welded, and (3) there are no rivets in that part of the shell which forms a side of a tank. A deck may be used as the top of a tank provided there are no

access or inspection openings or rivets therein, and the seams are continuously welded. No toilet or urinal shall be installed immediately above that part of the deck which forms the top of a tank. All potable water tanks shall be located at a sufficient height above the bilge to allow for draining and to prevent submergence in bilge water.

(c) Each potable water tank shall be provided with a means of drainage and, if it is equipped with a manhole, overflow, vent, or a device for measuring depth of water, provision shall be made to prevent entrance into the tank of any contaminating substance. No deck or sanitary drain or pipe carrying any nonpotable water or liquid shall be permitted to pass through the tank.

(d) Tanks and piping shall bear clear marks of identification.

(e) There shall be no backflow or cross connection between potable water systems and any other systems. Pipes and fittings conveying potable water to any fixture, apparatus, or equipment shall be installed in such way that backflow will be prevented. Waste pipes from any part of the potable water system, including treatment devices, discharging to a drain, shall be suitably protected against backflow.

(f) Water systems shall be cleaned, disinfected, and flushed whenever the Commissioner of Food and Drugs shall find such treatment necessary to prevent the introduction, transmission, or spread of communicable diseases.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

#### **§ 1250.83 Storage of water prior to treatment.**

The following requirements with respect to the storage of water on vessels prior to treatment must be met in order to obtain approval of treatment facilities under § 1240.90 of this chapter.

(a) The tank, whether independent or formed by the skin of the ship, deck, tank top, or partitions common with other tanks, shall be free of apparent leakage.

(b) No sanitary drain shall pass through the tank.

(c) The tank shall be adequately protected against both the backflow and discharge into it of bilge or highly contaminated water.

#### **§ 1250.84 Water in galleys and medical care spaces.**

(a) Potable water, hot and cold, shall be available in the galley and pantry except that, when potable water storage is inadequate, nonpotable water may be piped to the galley for deck washing and in connection with garbage disposal. Any tap discharging nonpotable water which is installed for deck washing purposes shall not be more than 18 inches above the deck and shall be distinctly marked "For deck washing only".

(b) In the case of existing vessels on which heat treated wash water has been used for the washing of utensils prior to the effective date of the regulations in this part, such water may continue to be so used provided controls are employed to insure the heating of all water to at least 170 °F before discharge from the heater.

(c) Potable water, hot and cold, shall be available in medical care spaces for hand-washing and for medical care purposes excluding hydrotherapy.

#### **§ 1250.85 Drinking fountains and coolers; ice; constant temperature bottles.**

(a) Drinking fountains and coolers shall be constructed of impervious, nonoxidizing material, and shall be so designed and constructed as to be easily cleaned. The jet of a drinking fountain shall be slanting and the orifice of the jet shall be protected by a guard in such a manner as to prevent contamination thereof by droppings from the mouth. The orifice of such a jet shall be located a sufficient distance above the rim of the basin to prevent backflow.

(b) Ice shall not be permitted to come in contact with water in coolers or constant temperature bottles.

(c) Constant temperature bottles and other containers used for storing or dispensing potable water shall be kept clean at all times and shall be subjected to effective bactericidal treatment after each occupancy of the space served and at intervals not exceeding one week.

§ 1250.86

**§ 1250.86 Water for making ice.**

Only potable water shall be piped into a freezer for making ice for drinking and culinary purposes.

**§ 1250.87 Wash water.**

Where systems installed on vessels for wash water, as defined in § 1250.3(n), do not comply with the requirements of a potable water system, prescribed in § 1250.82, they shall be constructed so as to minimize the possibility of the water therein being contaminated. The storage tanks shall comply with the requirements of § 1250.83, and the distribution system shall not be cross connected to a system carrying water of a lower sanitary quality. All faucets shall be labeled "Unfit for drinking".

**§ 1250.89 Swimming pools.**

(a) Fill and draw swimming pools shall not be installed or used.

(b) Swimming pools of the recirculation type shall be equipped so as to provide complete circulation, replacement, and filtration of the water in the pool every six hours or less. Suitable means of chlorination and, if necessary, other treatment of the water shall be provided to maintain the residual chlorine in the pool water at not less than 0.4 part per million and the pH (a measure of the hydrogen ion concentration) not less than 7.0.

(c) Flowing-through types of salt water pools shall be so operated that complete circulation and replacement of the water in the pool will be effected every 6 hours or less. The water delivery pipe to the pool shall be independent of all other pipes and shall originate at a point where maximum flushing of the pump and pipe line is effected after leaving polluted waters.

**§ 1250.90 Toilets and lavatories.**

Toilet and lavatory equipment and spaces shall be maintained in a clean condition.

**§ 1250.93 Discharge of wastes.**

Vessels operating on fresh water lakes or rivers shall not discharge sewage, or ballast or bilge water, within such areas adjacent to domestic water intakes as are designated by the Commissioner of Food and Drugs.

21 CFR Ch. I (4–1–98 Edition)

CROSS REFERENCE: For Environmental Protection Agency's regulations for vessel sanitary discharges as related to authority under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1314 et seq.), see 40 CFR part 140.

[40 FR 5624, Feb. 6, 1975, as amended at 48 FR 11432, Mar. 18, 1983]

**§ 1250.95 Insect control.**

Vessels shall be maintained free of infestation by flies, mosquitoes, fleas, lice, and other insects known to be vectors in the transmission of communicable diseases, through the use of screening, insecticides, and other generally accepted methods of insect control.

**§ 1250.96 Rodent control.**

Vessels shall be maintained free of rodent infestation through the use of traps, poisons, and other generally accepted methods of rodent control.

**PARTS 1251–1269 [RESERVED]**

**PART 1270—HUMAN TISSUE  
INTENDED FOR TRANSPLANTATION**

**Subpart A—General Provisions**

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AUTHORITY: 42 U.S.C. 216, 243, 264, 271.

SOURCE: 62 FR 40444, July 29, 1997, unless otherwise noted.

**Subpart A—General Provisions****§ 1270.1 Scope.**

(a) The regulations in this part apply to human tissue and to establishments or persons engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue.

(b) Regulations in this chapter as they apply to drugs, biologics, devices, or other FDA-regulated commodities do not apply to human tissue, except as specified in this part.

(c) Regulations in this chapter do not apply to autologous human tissue.

(d) Regulations in this chapter do not apply to hospitals or other clinical facilities that receive and store human tissue only for transplantation within the same facility.

**§ 1270.3 Definitions.**

(a) *Act* for the purpose of this part means the Public Health Service Act, section 361 (42 U.S.C. 264).

(b) *Blood component* means any part of a single-donor unit of blood separated by physical or mechanical means.

(c) *Colloid* means a protein or polysaccharide solution that can be used to increase or maintain osmotic (oncotic) pressure in the intravascular compartment such as albumin, dextran, hetastarch; or certain blood components, such as plasma and platelets.

(d) *Contract services* are those functions pertaining to the recovery, screening, testing, processing, storage, or distribution of human tissue that another establishment agrees to perform for a tissue establishment.

(e) *Crystalloid* means a balanced salt and/or glucose solution used for electrolyte replacement or to increase intravascular volume such as saline, Ringer's lactate solution, or 5 percent dextrose in water.

(f) *Distribution* includes any transfer or shipment of human tissue (including importation or exportation), whether or not such transfer or shipment is entirely intrastate and whether or not possession of the tissue is taken.

(g) *Donor* means a human being, living or dead, who is the source of tissue for transplantation.

(h) *Donor medical history interview* means a documented dialogue with an individual or individuals who would be

knowledgeable of the donor's relevant medical history and social behavior; such as the donor if living, the next of kin, the nearest available relative, a member of the donor's household, other individual with an affinity relationship, and/or the primary treating physician. The relevant social history includes questions to elicit whether or not the donor met certain descriptions or engaged in certain activities or behaviors considered to place such an individual at increased risk for HIV and hepatitis.

(i) *Establishment* means any facility under one management including all locations, that engages in the recovery, screening, testing, processing, storage, or distribution of human tissue intended for transplantation.

(j) *Human tissue* means any tissue derived from a human body, which:

(1) Is intended for transplantation to another human for the diagnosis, cure, mitigation, treatment, or prevention of any condition or disease;

(2) Is recovered, processed, stored, or distributed by methods that do not change tissue function or characteristics;

(3) Is not currently regulated as a human drug, biological product, or medical device;

(4) Excludes kidney, liver, heart, lung, pancreas, or any other vascularized human organ; and

(5) Excludes semen or other reproductive tissue, human milk, and bone marrow.

(k) *Importer of record* means the person, establishment or their representative responsible for making entry of imported goods in accordance with all laws affecting such importation.

(l) *Legislative consent* means relating to any of the laws of the various States that allow the medical examiner or coroner to procure corneal tissue in the absence of consent of the donor's next-of-kin.

(m) *Person* includes an individual, partnership, corporation, association, or other legal entity.

(n) *Physical assessment* means a limited autopsy or recent antemortem or postmortem physical examination of the donor to assess for any signs of HIV

and hepatitis infection or signs suggestive of any risk factor for such infections.

(o) *Plasma dilution* means a decrease in the concentration of the donor's plasma proteins and circulating antigens or antibodies resulting from the transfusion of blood or blood components and/or infusion of fluids.

(p) *Processing* means any activity performed on tissue, other than tissue recovery, including preparation, preservation for storage, and/or removal from storage to assure the quality and/or sterility of human tissue. Processing includes steps to inactivate and remove adventitious agents.

(q) *Quarantine* means the identification of human tissue as not suitable for transplantation, including human tissue that has not yet been characterized as being suitable for transplantation. Quarantine includes the storage of such tissue in an area clearly identified for such use, or other procedures, such as automated designation, for prevention of release of such tissue for transplantation.

(r) *Reconstituted blood* means the extracorporeal resuspension of a blood unit labeled as "Red Blood Cells" by the addition of colloids and/or crystalloids to produce a hematocrit in the normal range.

(s) *Recovery* means the obtaining from a donor of tissue that is intended for use in human transplantation.

(t) *Relevant medical records* means a collection of documents including a donor medical history interview, a physical assessment of the donor, laboratory test results, medical records, existing coroner and autopsy reports, or information obtained from any source or records which may pertain to donor suitability regarding high risk behaviors, clinical signs and symptoms for HIV and hepatitis, and treatments related to medical conditions suggestive of such risk.

(u) *Responsible person* means a person who is authorized to perform designated functions for which he or she is trained and qualified.

(v) *Storage* means holding tissue.

(w) *Summary of records* means a condensed version of the required testing and screening records that contains the identity of the testing laboratory, the

listing and interpretation of all required infectious disease tests, and a listing of the documents reviewed as part of the relevant medical records, and the name of the person or establishment determining the suitability of the human tissue for transplantation.

(x) *Vascularized* means containing the original blood vessels which are intended to carry blood after transplantation.

### Subpart B—Donor Screening and Testing

#### § 1270.21 Determination of donor suitability for human tissue-intended for transplantation.

(a) Donor specimens shall be tested for the following communicable viruses, using Food and Drug Administration (FDA) licensed donor screening tests in accordance with manufacturers' instructions:

(1) Human immunodeficiency virus, Type 1 (e.g., FDA licensed screening test for anti-HIV-1);

(2) Human immunodeficiency virus, Type 2 (e.g., FDA licensed screening test for anti-HIV-2);

(3) Hepatitis B (e.g., FDA licensed screening test for HBsAg); and

(4) Hepatitis C (e.g., FDA licensed screening test for anti-HCV).

(b) In the case of a neonate, the mother's specimen is acceptable for testing.

(c) Such infectious disease testing shall be performed by a laboratory certified under the Clinical Laboratories Improvement Amendments of 1988 (CLIA).

(d) Human tissue shall be accompanied by records indicating that the donor's specimen has been tested and found negative using FDA licensed screening tests for HIV-1, HIV-2, hepatitis B, and hepatitis C. FDA licensed screening tests labeled for cadaveric specimens must be used when available.

(e) Human tissue for transplantation shall be accompanied by a summary of records or copies of the original records of the donor's relevant medical records as defined in § 1270.3(t) which documents freedom from risk factors for and clinical evidence of hepatitis B, hepatitis C, or HIV infection. There



shall be a responsible person designated and identified in the original record and summary of records as having made the determination that the human tissue is suitable for transplantation.

(f) Determination by the responsible person that a donor of human tissue intended for transplantation is suitable shall include ascertainment of the donor's identity, and accurately recorded relevant medical records (as defined in § 1270.3(t)) which documents freedom from risk factors for and clinical evidence of hepatitis B, hepatitis C, and HIV infection.

(g) For corneal tissue procured under legislative consent where a donor medical history screening interview has not occurred, a physical assessment of the donor is required and other available information shall be reviewed. The corneal tissue shall be accompanied by the summary of records documenting that the corneal tissue was determined to be suitable for transplantation in the absence of the donor medical history interview. Corneal tissue procured under legislative consent shall be documented as such in the summary of records.

(h) Human tissue shall be determined to be not suitable for transplantation if from:

(1) A donor whose specimen has tested repeatedly reactive on a screening test for HIV, hepatitis B, or hepatitis C;

(2) A donor where blood loss is known or suspected to have occurred and transfusion/infusion of more than 2,000 milliliters (mL) of blood (i.e., whole blood, reconstituted blood, or red blood cells), or colloids within 48 hours; or more than 2,000 mL of crystalloids within 1 hour; or any combination thereof prior to the collection of a blood specimen from the tissue donor for testing, unless:

(i) A pretransfusion or preinfusion blood specimen from the tissue donor is available for infectious disease testing; or

(ii) An algorithm is utilized that evaluates the volumes administered in the 48 hours prior to collecting the blood specimen from the tissue donor to ensure that there has not been plas-

ma dilution sufficient to affect test results; or

(3) A donor who is 12 years of age or less and has been transfused or infused at all, unless:

(i) A pretransfusion or preinfusion blood specimen from the tissue donor is available for infectious disease testing; or

(ii) An algorithm is utilized that evaluates the volumes administered in the 48 hours prior to collecting the blood specimen from the tissue donor to ensure that there has not been plasma dilution sufficient to affect test results.

### Subpart C—Procedures and Records

#### § 1270.31 Written procedures.

(a) There shall be written procedures prepared and followed for all significant steps in the infectious disease testing process under § 1270.21 which shall conform to the manufacturers' instructions for use contained in the package inserts for the required tests. These procedures shall be readily available to the personnel in the area where the procedures are performed unless impractical. Any deviation from the written procedures shall be recorded and justified.

(b) There shall be written procedures prepared and followed for all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as provided in § 1270.21. Such procedures shall be readily available to personnel who may perform the procedures. Any deviation from the written procedures shall be recorded and justified.

(c) There shall be written procedures prepared and followed for designating and identifying quarantined tissue.

(d) There shall be written procedures prepared, validated, and followed for prevention of infectious disease contamination or cross-contamination by tissue during processing.

(e) In conformity with this section, any facility may use current standard written procedures such as those in a technical manual prepared by another organization, provided the procedures are consistent with and at least as

stringent as the requirements of this part.

**§ 1270.33 Records, general requirements.**

(a) Records shall be maintained concurrently with the performance of each significant step required in this part in the performance of infectious disease screening and testing of donors of human tissue. All records shall be accurate, indelible, and legible. The records shall identify the person performing the work, the dates of the various entries, and shall be as detailed as necessary to provide a complete history of the work performed and to relate the records to the particular tissue involved.

(b) All human tissue shall be quarantined until the following criteria for donor suitability are satisfied:

(1) All infectious disease testing under § 1270.21 has been completed, reviewed by the responsible person, and found to be negative; or

(2) Donor screening has been completed, reviewed by the responsible person, and determined to assure freedom from risk factors for and clinical evidence of HIV infection, hepatitis B, and hepatitis C.

(c) All human tissue processed or shipped prior to determination of donor suitability must be under quarantine, accompanied by records assuring identification of the donor and indicating that the tissue has not been determined to be suitable for transplantation.

(d) All human tissue determined to be suitable for transplantation must be accompanied by a summary of records, or copies of such original records, documenting that all infectious disease testing and screening under § 1270.21 has been completed, reviewed by the responsible person, and found to be negative, and that the tissue has been determined to be suitable for transplantation.

(e) Human tissue shall be quarantined until the tissue is either determined to be suitable for transplantation or appropriate disposition is accomplished.

(f) All persons or establishments that generate records used in determining the suitability of the donor shall retain

such records and make them available for authorized inspection or upon request by FDA. The person(s) or establishment(s) making the determination regarding the suitability of the donor shall retain all records, or true copies of such records required under § 1270.21, including all testing and screening records, and shall make them available for authorized inspection or upon request from FDA. Records that can be retrieved from another location by electronic means meet the requirements of this paragraph.

(g) Records required under this part may be retained electronically, or as original paper records, or as true copies such as photocopies, microfiche, or microfilm, in which case suitable reader and photocopying equipment shall be readily available.

(h) Records shall be retained at least 10 years beyond the date of transplantation if known, distribution, disposition, or expiration, of the tissue, whichever is latest.

**§ 1270.35 Specific records.**

Records shall be maintained that include, but are not limited to:

(a) Documentation of results and interpretation of all required infectious disease tests;

(b) Information on the identity and relevant medical records of the donor, as required by § 1270.21(e) in English or, if in another language translated to English and accompanied by a statement of authenticity by the translator which specifically identifies the translated document;

(c) Documentation of the receipt and/or distribution of human tissue; and

(d) Documentation of the destruction or other disposition of human tissue.

**Subpart D—Inspection of Tissue Establishments**

**§ 1270.41 Inspections.**

(a) An establishment covered by these regulations in this part, including any location performing contract services, shall permit an authorized inspector of the Food and Drug Administration (FDA) to make at any reasonable time and in a reasonable manner such inspection of the establishment,

its facilities, equipment, processes, products, and records as may be necessary to determine compliance with the provisions of this part. Such inspections may be made with or without notice and will ordinarily be made during regular business hours.

(b) The frequency of inspection will be at the agency's discretion.

(c) The inspector shall call upon a responsible person of the establishment and may question the personnel of the establishment as the inspector deems necessary.

(d) The inspector may review and copy any records required to be kept pursuant to part 1270.

(e) The public disclosure of records containing the name or other positive identification of donors or recipients of human tissue will be handled in accordance with FDA's procedures on disclosure of information as set forth in 21 CFR part 20 of this chapter.

**§ 1270.42 Human tissue offered for import.**

(a) When human tissue is offered for entry, the importer of record must notify the director of the district of the Food and Drug Administration having jurisdiction over the port of entry through which the tissue is imported or offered for import, or such officer of the district as the director may designate to act in his or her behalf in administering and enforcing this part.

(b) Human tissue offered for import must be quarantined until the human tissue is released by FDA.

**§ 1270.43 Retention, recall, and destruction of human tissue.**

(a) Upon a finding that human tissue may be in violation of the regulations in this part, an authorized Food and Drug Administration (FDA) representative may:

(1) Serve upon the person who distributed the tissue a written order that

the tissue be recalled and/or destroyed, as appropriate, and upon persons in possession of the tissue that the tissue shall be retained until it is recalled by the distributor, destroyed, or disposed of as agreed by FDA, or the safety of the tissue is confirmed; and/or

(2) Take possession of and/or destroy the violative tissue.

(b) The written order will ordinarily provide that the human tissue be recalled and/or destroyed within 5 working days from the date of receipt of the order and will state with particularity the facts that justify the order.

(c) After receipt of an order under this part, the person in possession of the human tissue shall not distribute or dispose of the tissue in any manner except to recall and/or destroy the tissue consistent with the provisions of the order, under the supervision of an authorized official of FDA.

(d) In lieu of paragraphs (b) and (c) of this section, other arrangements for assuring the proper disposition of the tissue may be agreed upon by the person receiving the written order and an authorized official of FDA. Such arrangements may include providing FDA with records or other written information that adequately assure that the tissue has been recovered, screened, tested, processed, stored, and distributed in conformance with part 1270.

(e) Within 5 working days of receipt of a written order for retention, recall, and/or destruction of tissue (or within 5 working days of the agency's possession of such tissue), the recipient of the written order or prior possessor of such tissue shall request a hearing on the matter in accordance with part 16 of this chapter. The order for destruction will be held in abeyance pending resolution of the hearing request.

**PARTS 1271–1299 [RESERVED]**